

EIR Review 298347 – Additional Document 1

From: [Redacted]@Circularityscotland.com

Sent: 03 March 2021 20:02

To: [Redacted]@gov.scot

Subject: Application to be a Scheme Administrator [UNSCANNED]

Good evening [Redacted]

It has taken a little longer than we all expected, but I am pleased to finally submit Circularity Scotland's application to become a Scheme Administrator. The attached zip file contains:

- A covering letter
- The application document
- 5 appendices

Each word document is protected by a password, which I'll text to your mobile phone.

I look forward to what I'm sure will be many discussions with you and your team over the coming weeks.

Best regards

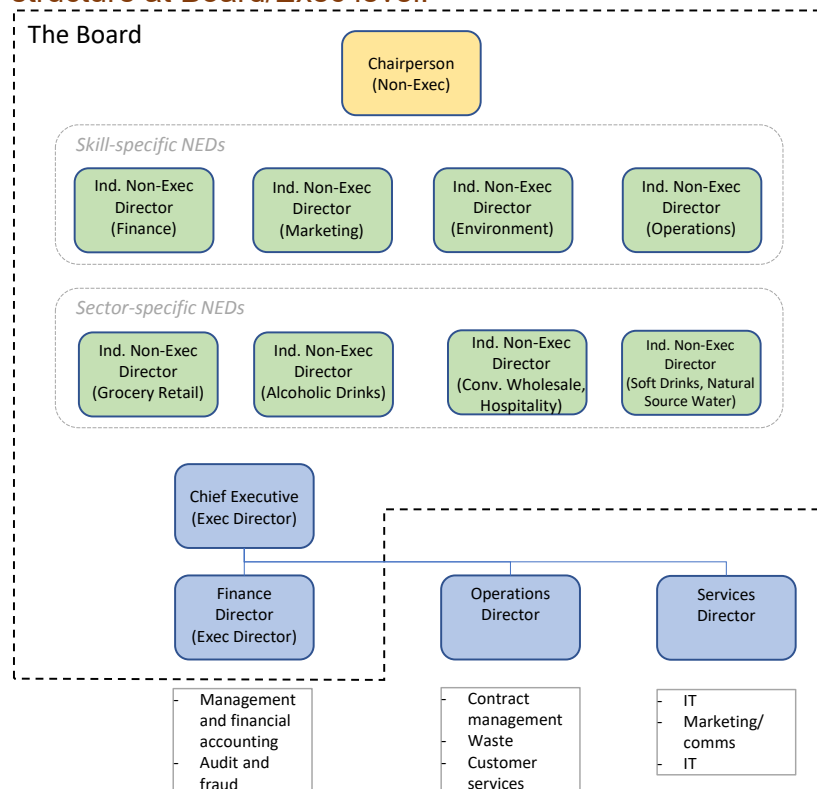
[Redacted]

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- Please provide a copy of your organisation’s business plan or equivalent document. In particular, the following information **if available** would help to assess the application:
 - The structure of the business
 - The implementation plan for the business
 - Your recruitment plans especially at Board level
 - Description of business operations
 - Detailed financing plan
 - Financial plan

We have submitted a copy of the business plan prepared in February to support discussions with potential lenders (some key sections have been updated to reflect the position in our application and these are highlighted in coloured text). We have provided below, against your bullets above, some additional considerations:

- The structure of the business
 - Largely covered in the business plan. This is the proposed structure at Board/Exec level:



- The implementation plan for the business
 - Our implementation approach is covered in the Application, acknowledging that a detailed plan has not been submitted for the reasons described in the application. As stated in the application we believe we will have greater clarity over the remaining risks and uncertainties by summer 2021 and will be in a position then to share more accurate detail. We would also expect to be able to share more accurate detail with the gateway review team when it starts its work.

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- Your recruitment plans especially at Board level
 - As indicated in the business plan we have recruited an experienced FD/MD/chair to lead on the appointment of the board. Our current plan (expected to be ratified by members in early April) is to appoint 2 additional interim directors and an interim chair to provide corporately and programme governance, and to appoint the main board. These additional board members will be selected on the basis that they are prepared (if approved by members) to put themselves forward for permanent board positions.
- Description of business operations
 - Covered in the business plan, the application, and responses to previous questions
- Detailed financing plan
 - Covered in the application and the response to previous questions
- Financial plan
 - Covered in the application and the response to previous questions

APPENDIX 3 – TERMS OF REFERENCE FOR BOARD POSITIONS

**TERMS OF REFERENCE FOR THE CHAIR, THE CHIEF EXECUTIVE AND
THE SENIOR INDEPENDENT DIRECTOR**

(as adopted by the board of directors of the Company on [◆] 2021)

In this document, **Board** means the board of directors of the Company and **chair** means the chair of the Board.

1 Relationship of the chair and the chief executive – guiding principles

- 1.1 The two roles must be complementary. The chair is responsible for managing the business of the Board while the chief executive runs the Company's business. The chair and the chief executive must ensure that each is appropriately informed of the other's current areas of activities and they should be seen to work closely together as a team.
- 1.2 Their relationship must be based on mutual respect and trust. It must be frank and open, with problem areas being addressed openly.
- 1.3 The chair shall have direct access to senior executives in the Company as he or she deems necessary.
- 1.4 The chair and the chief executive must agree on their respective roles in setting major tasks and in taking new initiatives.
- 1.5 There should be shared vision for the culture, values, behaviour and long-term future of the Company.
- 1.6 There should be shared views on the fundamental strategy for the Company and for the application of cash flow.
- 1.7 There should be a shared approach to public affairs and employee relations.
- 1.8 These guiding principles should only be modified by mutual agreement between the chair and chief executive and with the prior approval of the Board.

2 Terms of reference: the chair

The chair's duties include:

(a) **Leadership, culture and strategy:**

- (i) setting a Board agenda which is primarily focused on strategy, performance, achievement of goals and accountability and ensuring that issues relevant to these objectives are reserved for Board consideration;
- (ii) demonstrating the highest standards of integrity and probity, and setting clear expectations concerning the Company's culture, values and behaviours, and the style and tone of Board discussions;
- (iii) promoting a culture of openness and debate;
- (iv) chairing board meetings and general meetings;

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- (v) ensuring the submission to the Board by the chief executive of objectives, policies and strategies for the Company, including the business plan and the annual budget;
 - (vi) ensuring that the Board determines the nature, and extent, of the significant risks the Company is willing to embrace in the implementation of its strategy;
 - (vii) monitoring progress towards the timely and effective achievement and implementation of the objectives, policies and strategies set by the Board and ensuring that appropriate decisions are taken promptly but only after sufficient time for discussion of strategic, complex or contentious issues; and
 - (viii) keeping under review with the Board the general progress and long-term development of the Company and ensuring that effective strategic planning for the Company is undertaken by the chief executive and endorsed by the Board after discussion, consistent with the goals of the Company and in accordance with the Company's purpose, values and strategy;
- (b) **Board direction and effectiveness:**
- (i) being responsible for leadership of the Board and ensuring its effectiveness on all aspects of its role, facilitating constructive board relations and creating the conditions for overall Board and individual director effectiveness;
 - (ii) ensuring that all directors are aware of their responsibilities;
 - (iii) with the assistance of the executive directors and the company secretary, setting the agenda for the Board's deliberations;
 - (iv) managing the business of the Board and chairing its meetings, managing the relationships between directors and resolving differences between directors and seeing that decisions are reached promptly but only after sufficient time for discussion of strategic, complex or contentious issues and after due consideration by the directors of their duty under section 172 of the Companies Act 2006, the Company's strategy and values, and the impact of decisions on employees and other stakeholders;
 - (v) fostering relationships founded on trust, mutual respect and open communication – both in and outside the boardroom – between the non-executive directors and executive team;
 - (vi) developing productive working relationships with all executive directors, and the chief executive in particular, providing support and advice while respecting executive responsibility;
 - (vii) consulting the senior independent director on Board matters as appropriate;
 - (viii) ensuring that all directors receive high quality, accurate, timely and clear information to support the proper performance of their duties; and
 - (ix) providing advice to the chief executive on the allocation of duties to individual directors and assignment of *ad hoc* responsibilities or special tasks to directors or groups of directors;

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- (c) **Board Committees:**
- (i) ensuring that the Board's committees are properly structured with appropriate terms of reference[, which are published on the Company website,] and that committee membership is periodically refreshed and individual independent non-executive directors are not overburdened when deciding the chairs and membership of committees;
 - (ii) ensuring that sufficient time is allowed at the Board for committees to report on the nature and content of discussion, on recommendations, and on actions to be taken. Where there is disagreement between the relevant committee and the Board, adequate time should be made available for discussion of the issue with a view to resolving the disagreement;
 - (iii) encouraging the active engagement of all Board members in Board and committee meetings, drawing fully on their skills, experience, knowledge and, where appropriate, independence;
 - (iv) arranging for the chairmen of Board committees to be available to answer questions at each annual general meeting and ensuring all other directors attend;
- (d) **Board evaluation:**
- (i) holding meetings with the non-executive directors without the executive directors present in order to facilitate a full and frank airing of views;
 - (ii) leading, with support from the senior independent director as appropriate, the annual evaluation of the performance of the Board, its committees and individual directors, facilitating periodic external board evaluations, and acting on the results of such evaluations;
 - (iii) [considering having a regular externally facilitated board evaluation and, where one is undertaken, ensure that the Board gets the most from such externally facilitated board evaluation and that it is not approached as a compliance exercise;]
 - (iv) giving a summary of the outcomes and actions of the board evaluation process in their statement in the annual report;
 - (v) formally appraising the performance of the chief executive and making appropriate recommendations to the Remuneration Committee for the chief executive's remuneration package, taking into account his or her performance; and
 - (vi) as appropriate, reviewing with the chief executive his or her conclusions and recommendations to the Remuneration Committee on the performance and remuneration of executive directors;
- (e) **Corporate governance:**
- (i) ensuring that the corporate governance of the Company is maintained in line with current best practice and the policies agreed by the Board;

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- (ii) alongside the secretary, periodically review whether the Board and the Company's governance processes are fit for purpose and consider any improvements or initiatives that could strengthen the governance of the Company; and
 - (iii) supporting the secretary;
- (f) **Employee and stakeholder engagement:**
- (i) participating with the chief executive, as appropriate, in public relations, including ensuring effective communications with the Company's Members, other companies, organisations and bodies, the media and stakeholders generally;
 - (ii) seeking regular engagement with Members in order to understand their issues and concerns, in particular discussing governance and strategy with them and ensuring that the Board as a whole has a clear understanding of the views of Members; and
 - (iii) representing the Company to its key stakeholders, considering ways in which to obtain feedback from the workforce and other stakeholders, and ensuring that the Board listens to the views of Members, the workforce, customers and other key stakeholders.

3 Terms of reference: the chief executive

3.1 The chief executive is the most senior executive of the Company with operational responsibility for proposing the Company's strategy and for delivering the Company's strategy as agreed by the Board, and for directing and promoting the effective and efficient operation and development of the Company consistent with the primary objectives and purpose of the Company.

3.2 The chief executive's duties include:

(a) **Strategy and operations:**

- (i) being generally responsible to the Board for the development of the Company and its effective and efficient operation, including cash flow;
- (ii) having responsibility for effective strategic planning for the Company in accordance with Board policy and consistent with the primary objectives and purpose of the Company and for preparing objectives, policies and strategies (including the Company business plan and the annual budget) for submission to the Board;
- (iii) ensuring that such action is taken as is necessary to secure the timely and effective implementation of the objectives, policies and strategies set by the Board and of decisions taken by or on behalf of the Board whilst optimising, as far as is reasonably possible, the use and adequacy of the Company's resources; and
- (iv) regularly keeping the chair informed on all matters that may be of importance to the Company, including its current performance and progress;

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- (b) **Risk management and controls:**
- (i) managing the Company's risk profile, including the health and safety performance of the business, in line with the extent and categories of risk identified as acceptable by the Board;
 - (ii) in conjunction with the Audit and Risk Committee, ensuring appropriate internal controls are in place; and
 - (iii) taking all reasonable steps to ensure that the Company complies with all relevant legislation;
- (c) **Stakeholder engagement:**
- (i) with the support of the executive team, having primary responsibility for setting an example to the Company's workforce, for communicating to them the expectations of the Board in relation to the Company's culture, and for ensuring that operational policies and practices drive appropriate behaviours;
 - (ii) ensuring that the Board is made aware, when appropriate, of the views gathered via engagement with the workforce on issues of relevance to the business;
 - (iii) with any other member of the Board designated with such responsibility, leading the Company's processes for communicating to, and consulting with, the workforce; and
 - (iv) being responsible, with the participation of the chair as appropriate, for public relations, relations with the Company's Members, other companies, organisations and bodies, the media and the public generally;
- (d) **Corporate governance:**
- (i) supporting the chair to ensure that appropriate standards of governance permeate through all parts of the organisation;
 - (ii) ensuring that the Board knows the views of senior management on business issues in order to improve the standard of discussion in the boardroom and, prior to the final decision on an issue, explaining in a balanced way any divergence of view in the executive team; and
 - (iii) exercising executive stewardship of the Company's physical, financial and human resources having regard to the Company's responsibilities to its Members, customers, employees and other stakeholders;
- (e) **Board performance and reporting:**
- (i) formalising the roles and responsibilities of the senior executive team, including clear delegation of authorities, and, after appropriate consultation with the chair, allocating duties to individual directors and assigning *ad hoc* responsibilities or special tasks to directors or groups of directors;
 - (ii) motivating, reviewing and appraising the performance of the other executive directors and, after reviewing with the chair as appropriate, making appropriate

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recommendations to the Remuneration Committee on remuneration policy and specific remuneration packages and terms of employment of the senior executive team, including the secretary;

- (iii) providing a means for high quality, accurate, timely and clear disclosure of information, including an escalation route for issues;
- (iv) leading the executive directors and the senior executive team in the day to day running of the Company's business;
- (v) ensuring that management fulfils its obligation to provide the Board with:
 - (A) high quality, accurate, timely and clear information in a form and of a quality and comprehensiveness that will enable it to discharge its duties;
 - (B) the necessary resources for developing and updating their knowledge and capabilities; and
 - (C) appropriate knowledge of the Company, including access to company operations and members of the workforce;

(f) **Policies:**

developing the following policies for Board approval and then implementing them:

- (i) codes of conduct;
- (ii) health and safety policy;
- (iii) communications policy (including procedures for the release of inside information);
- (iv) corporate social responsibility policy;
- (v) environment and sustainability policy;
- (vi) human resources policy;
- (vii) charitable donations policy;
- (viii) bribery prevention policy;
- (ix) disclosure policy;
- (x) whistleblowing policy; and
- (xi) diversity policy.

4 Terms of reference: the senior independent director

4.1 The main responsibilities of the senior independent director in normal times are to:

- (a) act as a sounding board for the chair and provide support in the delivery of his or her objectives;

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- (b) serve as an intermediary for the other directors, ensuring that their views are conveyed to the chair;
- (c) ensure that the chair is passing on the views of Members, and especially that any concerns are conveyed to the full Board;
- (d) ensure that the chair is paying sufficient attention to succession planning and to take responsibility for an orderly succession process for the chair; and
- (e) lead the evaluation of the chair on behalf of the other directors.

4.2 The senior independent director will:

- (a) make himself or herself available for confidential discussions with other non-executive directors who may have concerns which they believe have not been properly considered by the Board as a whole;
- (b) lead a meeting of the non-executive directors, without the chair present, at least annually to appraise the chair's performance (taking into account the views of the executive directors) and on such other occasions as he or she deems appropriate;
- (c) be available to shareholders if they have concerns which contact through the normal channels of chair, chief executive or executive directors has failed to resolve or for which such contact is inappropriate;
- (d) attend sufficient meetings with stakeholders to obtain a balanced understanding of the issues and concerns of such stakeholders;
- (e) assist the chair in the process that evaluates the performance of the Board.

4.3 The senior independent director has the authority to call a meeting of the non-executive directors if, in his or her opinion, it is necessary.

4.4 When the Board is undergoing periods of stress, the role of the senior independent director is likely to assume a greater degree of prominence. He or she is expected to work with the chair and other directors, and/or shareholders, to resolve significant issues.

4.5 The following are the types of circumstance which may give rise to intervention being required by the senior independent director to maintain Board and Company stability:

- (a) where there is a dispute between the chair and the chief executive;
- (b) where Members or non-executive directors have expressed concerns that are not being addressed by the chair or the chief executive;
- (c) if the strategy being followed by the chair and the chief executive is not supported by the full Board;
- (d) where the relationship between the chair and the chief executive is particularly close;
- (e) where decisions are being made without approval of the full Board; or
- (f) where succession planning is being ignored.

APPENDIX 4 – PRODUCER AGREEMENT



Dated 2021



CIRCULARITY SCOTLAND LIMITED

[PRODUCER]

PRODUCER AGREEMENT

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Annexures¹

[Policy Document No. 1: Product Registration, Marking and Coding]

[Policy Document No. 2: REDACTED]

[Policy Document No. 3: Fraud Prevention and Mitigation Measures]

[Policy Document No. 4: Return Point Handling Fee – Principles]

[Policy Document No. 5: Packaging Collection]

[Policy Document No. 6: REDACTED]

[Policy Document No. 7: Producer Specific Data Interchange & Formats]

[Policy Document No. 8: Standards for Ancillary Container Materials]

¹ Drafting Note: we have previously discussed the need for a set of detailed briefing papers which set out the SA's position on a number of areas key to the operation of the SA and the scheme. The core purpose of producing such papers now is to (1) capture thinking to date, (2) handover to the Board of the SA to take these matters forward, and (3) facilitate wider dissemination of the detail of how the scheme and the SA will work, engaging feedback and input where appropriate from founding members. These papers need to be stand-alone, self-explanatory documents. 10FEB21 – draft papers now included, but draft no. and date of core contract remains at 2/23 Dec 20

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This Agreement is made on

202[1]

Between

- (1) **CIRCULARITY SCOTLAND LIMITED**, a private company limited by guarantee, registered in Scotland with company number SC680460 and whose registered office is at [Exchange Tower, 19 Canning Street, Edinburgh, EH3 8EH] (**Company**); and
- (2) [**PRODUCER**], (Company Number [◆]) whose registered office is at [◆] (**Producer**).

Whereas

- (A) The Company has been approved to carry out the functions of a Scheme Administrator for the purposes of the Regulations, including the functions specified in regulation 13(2) of the Regulations, and to fulfil the obligations specified in regulation 16 of the Regulations.
- (B) The Producer is a producer for the purposes of the Regulations. The Producer has appointed the Company to act as its Scheme Administrator and to carry out the Functions and Obligations, all in accordance with the Regulations and this Agreement.
- (C) The Company has agreed to act as the Producer's Scheme Administrator and to carry out the Functions and Obligations, all in accordance with the Regulations and this Agreement.
- (D) The Company and the Producer have agreed to enter into this Agreement to govern the commercial and operational arrangements between them.

It is agreed**1 Definitions and interpretations**

A number of terms used in this Agreement are defined in the Terms and Conditions and/or the Policies and all such defined terms shall apply throughout this Agreement.

2 Incorporation of Terms and Conditions and Policies

- 2.1 The parties agree that the Terms and Conditions and the Policies are incorporated into this Agreement by reference and must be adhered to at all times. For the avoidance of doubt, the Policies are intended to be legally binding on the Producer and the Company.
- 2.2 In the event of any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Regulations, the Regulations will prevail and the parties will join in procuring that the provisions of this Agreement are altered to accord with the provisions of the Regulations. In the event of any conflict, ambiguity or discrepancy between the provisions of the Terms and Conditions and the Policies, the Terms and Conditions will prevail and the Company will procure that the provisions of the Policies are altered to accord with the provisions of the Terms and Conditions. The overall order of priority, therefore, is (1) the Regulations, (2) the Terms and Conditions, and (3) the Policies.
- 2.3 The Company shall be entitled to amend the Policies (or any of them) from time to time as it sees fit but shall give the Producer such advance notice of the amendments in question as is reasonably practicable in the circumstances. Any such amendments shall take effect from the date on which the amendments are notified to the Producer (or such later date as the Company may specify).

EIR Review 298347 – Additional Document 4**3 Appointment of the Company as Scheme Administrator**

3.1 The Producer appoints the Company to act as the Producer's sole and exclusive Scheme Administrator for the purposes of the Regulations and the Company accepts such appointment, all on the terms of this Agreement.

3.2 As the Producer's Scheme Administrator, the Company shall perform the Functions and Obligations for the duration of this Agreement for the benefit of the Producer, all on the terms of this Agreement.

4 Obligations of the Company as Scheme Administrator**4.1 For the duration of this Agreement, the Company shall:**

- (a) act as the Producer's Scheme Administrator for the purposes of the Regulations;
- (b) comply with the Company's obligations as Scheme Administrator under the Regulations and pursuant to this Agreement; and
- (c) perform the Functions and Obligations for the benefit of the Producer, including (without prejudice to the generality of clauses 4.1(a) and (b)):
 - (i) applying to SEPA for registration of the Producer for the purposes of Regulation 7(1)(b);
 - (ii) at the Producer's cost, providing all assistance reasonably requested by the Producer for the purposes of Regulation 9(4) (appealing any cancellation of registration by SEPA);
 - (iii) not knowingly or recklessly supplying false information in connection with the application for registration of the Producer;
 - (iv) pursuant to Regulation 16(1)(a), complying with Regulations 10(1) and 11(1) on behalf of the Producer (i.e., providing information and notifications to SEPA under Regulation 10(1); collecting and keeping for at least 4 years a record of the information referred to in Regulation 11(2) and providing that information to SEPA; accepting the return of scheme packaging from retailers and wholesalers for the purposes of Regulation 11(1)(c); paying a sum equal to the deposit to the retailer or wholesaler in question for each item of scheme packaging that is returned in accordance with Regulation 11(1)(c); within the time limits specified in the Company's operational plan and/or agreed on a case-by-case basis between the Company and the return point operator in question, collecting scheme packaging from each return point operator, retailer operating a takeback service and hospitality retailer (Regulation 11(1)(e)); within the time limits specified in the Company's operational plan, paying a sum equal to the deposit for each item of scheme packaging collected plus a reasonable handling fee to each return point operator, retailer operating a takeback service and hospitality retailer from whom they collect scheme packaging (Regulations 11(1)(f) and (g)); meeting the minimum collection targets specified in schedule 3 to the Regulations);
 - (v) pursuant to Regulation 16(1)(b), providing any information requested by the Scottish Ministers or SEPA for the purpose of monitoring compliance with the requirements in Regulations 10(1) and 11(1);

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(vi) pursuant to Regulation 16(1)(c), notifying the Scottish Ministers and SEPA in writing of any material change in the information provided as part of the Company's original application pursuant to Regulation 14, within 28 days of the date of the change; and

(vii) notifying the Scottish Ministers and the Producer in writing if the Company intends to withdraw from acting as Scheme Administrator.

5 Obligations of the Producer

5.1 For the duration of this Agreement, the Producer shall:

- (a) comply with the Producer's obligations under the Regulations (consistent with a producer who has appointed a Scheme Administrator) and pursuant to this Agreement;
- (b) provide the Company with such assistance as the Company may reasonably request in order to enable the Company to act as the Producer's Scheme Administrator (including, without limitation, the provision of such information and assistance as is required to enable the Company to satisfy the obligations set out in Regulations 10(1) and 11(1)); and
- (c) without prejudice to the generality of clauses 5.1(a) and (b):
 - (i) provide all information reasonably requested by the Company to enable the Company to make an application for registration of the Producer with SEPA in accordance with Regulation 7(3), with such information being received by the Company no later than 10 Business Days before the deadline for submission to SEPA (save for the operational plan, with the Company will provide);
 - (ii) pay the registration fee of £360 referred to in Regulation 7(3), with such fee being received by the Company no later than 10 Business Days before the deadline for submission to SEPA of the application for registration of the Producer; and
 - (iii) at the Producer's cost, comply with the Producer's obligations under Regulation 12(2) (maintaining a record of the number and type of scheme articles first made available by that Producer to be marketed, offered for sale or sold for the purposes of its retail sale in Scotland; and supplying any information reasonably requested by the Company for the purposes of the Company's compliance with its obligations under Regulations 16(1)(a) to (c)).

5.2 For the duration of this Agreement, the Producer authorises the Company to represent the interests of the Producer as regards the Scheme.

5.3 The undertakings given by the Producer in clauses 5.1 and 5.2 are given by it both for itself and on behalf of such of its Associates (if any) as are relevant for the purposes of the Regulations and the Company's appointment as the Producer's Scheme Administrator. The Producer agree to procure that such Associates (if any) comply with and behave as if they are subject to the obligations, limitations and restrictions on the Producer that are set out in this Agreement.

EIR Review 298347 – Additional Document 4**6 Duration**

This Agreement shall commence on the Contract Date and shall continue thereafter for an indefinite period, unless and until it is terminated in accordance with clause 7.

7 Termination

7.1 Without prejudice to any other rights or remedies that either party may have, either party may terminate this Agreement (in whole, but not in part) for convenience at any time on giving the other party not less than [3] months' prior written notice.

7.2 Either party may, by giving written notice to the other party, immediately terminate this Agreement (in whole, but not in part), as of the date of the notice of termination, if any of the following circumstances occur or exist:

- (a) the other party commits a material breach of this Agreement which is not capable of being remedied; or
- (b) the other party commits a material breach of this Agreement which is capable of being remedied but is not remedied within 30 days after the date on which notice of the breach in question has been given by the non-breaching party to the breaching-party; or
- (c) the other party is the subject of an Insolvency Event.

7.3 The Company may, by giving written notice to the Producer, immediately terminate this Agreement (in whole, but not in part), as of the date of the notice of termination, if the Producer's registration with SEPA for the purposes of the Regulations is cancelled pursuant to Regulation 9 through no fault of the Company.

7.4 The Producer may, by giving written notice to the Company, immediately terminate this Agreement (in whole, but not in part), as of the date of the notice of termination, if the Company amends any Policy in a manner which the Producer, acting reasonably and in good faith, considers to be unfair.

7.5 This Agreement shall terminate automatically in the circumstances where the Company's authority to act as a Scheme Administrator and to carry out the Functions and Obligations expires, is withdrawn or is revoked.

8 Governing law

8.1 This Agreement shall be governed by and construed in accordance with Scots law.

8.2 All claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Agreement, its subject matter, negotiation or formation shall be determined in accordance with Scots law.

8.3 If in any court any party argues that a court other than the courts of Scotland has jurisdiction to determine any claims or disputes (including any non-contractual claims or disputes) arising out of or in connection with this Agreement, that issue shall be determined in accordance with Scots law, and any right that any person might otherwise have to rely upon the law of the forum or any other law is irrevocably and unconditionally waived.

EIR Review 298347 – Additional Document 4**9 Submission to jurisdiction**

- 9.1 Each party irrevocably submits to the exclusive jurisdiction of the Scottish courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Agreement.
- 9.2 Each party irrevocably waives any right that it may have to object on any ground to an action being brought in the Scottish courts, to claim that the action brought in the Scottish courts has been brought in an inconvenient forum, or to claim that the Scottish courts do not have jurisdiction (and the waiver contained in this clause 9.2 includes a waiver of all formal and substantive requirements of any otherwise competent jurisdiction in relation to this clause 9.2).

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9.3 Each party undertakes not to contest in any court in any jurisdiction the enforcement in that jurisdiction of any judgment of the courts of Scotland against it on the ground that the Scottish courts did not have jurisdiction over it or that service of process was invalid or ineffective or resulted in it not having due or adequate notice of the proceedings.

10 Counterparts

10.1 This Agreement may be entered into in the form of two or more counterparts, each executed by one or more of the parties but will not be effective until all parties have executed at least one counterpart.

10.2 Each counterpart will be an original of this Agreement and all the counterparts taken together will constitute one instrument: **In witness whereof** these presents consisting of this and the preceding [5] pages, together with the Schedule, are executed as follows:

Subscribed for and on behalf of
Circularity Scotland Limited

at Director

on Full Name

in the presence of

Witness signature

Full name

Address

.....

Subscribed for and on behalf of
[Producer]

at Director/Authorised Signatory

on Full Name

in the presence of

Witness signature

Full name

Address

.....

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This is the Schedule referred to in the foregoing Producer Agreement between Circularity Scotland Limited and the Producer named in the foregoing Producer Agreement

Schedule**Terms and Conditions****1 Fees**

- 1.1 The registration fee of £360 referred to in Regulation 7(3) must be paid by the Producer to the Company so as to be received by the Company in cleared funds no later than 10 Business Days before the Company's deadline for submission to SEPA.
- 1.2 The Company shall also be entitled to charge Producers [refundable] administration fees in accordance with the Company's standard rate card, as published from time to time, PROVIDED THAT in relation to applications received before 31 December 2021, any such fees shall be charged in accordance with the Company's discounted rate card, which shall be in place until 31 December 2021. [REDACTED]
- 1.3 Pursuant to the Policy set out in Policy document 2, all Producers will also be required to pay to the Company a per unit fee (known as the producer fee) alongside the associated per unit deposit.

2 Intellectual Property Rights

- 2.1 Unless otherwise expressly agreed in writing by the relevant parties, nothing in this Agreement shall operate to assign or otherwise transfer a party's Intellectual Property Rights.
- 2.2 All title, interest and Intellectual Property Rights in the Logo shall belong to and vest in the Company immediately on creation.
- 2.3 The Company hereby grants to the Producer a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (with the right to grant sub-licences) to use, copy and maintain, for the duration of this Agreement, the Logo to the extent necessary for the purpose of enabling the Producer to receive and obtain the benefit of the Functions and Obligations. The Producer's use of the Logo must comply with the brand rules published by the Company from time to time.

3 Force Majeure

- 3.1 No party shall be liable for any failure to perform, or delay in performing, any of its obligations if and to the extent that the failure or delay is caused by Force Majeure provided that such failure or delay could not have been prevented by reasonable precautions. The time for performance of an obligation which is affected by Force Majeure shall be extended by a period which reflects the impact of the delay caused by the Force Majeure.
- 3.2 A party shall only be entitled to claim relief under paragraph 3.1 if (and, in the case of paragraphs 3.2(b) to 3.2(d) inclusive, for the period during which) it:
- (a) promptly gives notice to the other of its wish to claim relief under paragraph 3.1 together with details of the Force Majeure, including the party's estimate of its duration and the way in which and extent to which the party considers that the performance of its obligations is likely to be affected;

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- (b) updates the information provided under paragraph 3.2(a) at least once every 48 hours throughout the period during which the performance of its obligations is affected;
- (c) takes all reasonable steps it to minimise the effects of the Force Majeure on the performance of its obligations and to resume full performance; and
- (d) permits, and uses all reasonable efforts to facilitate, any efforts that the other party may make to obtain alternative supplies or services.²

4 Consequences of Termination

- 4.1 With effect from the Termination Date, the Company shall cease to represent the Producer as Scheme Administrator and the Producer shall comply with its obligations under the Regulations directly (or via an alternative Scheme Administrator, if any).
- 4.2 The Producer shall, on request by the Company and free of charge, provide the Company with such assistance as it reasonably requires in order to ensure that the termination or expiry of this Agreement causes the minimum disruption to the Scheme and that there is an orderly handover of any activities to the Producer and/or any replacement Scheme Administrator.
- 4.3 [Without prejudice to the generality of paragraph 4.2, because the market is continuous, if the Producer's appointment of the Company as Scheme Administrator terminates for any reason [other than under clause 7.5] then:
 - (a) the Producer shall not place any more registered products (i.e., with the same registered barcode / EAN) onto the market following the Termination Date; and
 - (b) the Company shall uplift outstanding packaging bearing the same registered barcode / EAN up to a maximum of 100% of deposits received for that registered barcode / EAN. Thereafter, the Producer shall remain liable for all incremental costs arising in relation to products bearing the registered barcode / EAN in question. [REDACTED]

5 Dispute resolution

- 5.1 If a dispute arises out of or in connection with this Agreement (**Dispute**) between the Company and the Producer, either party may refer the matter for determination in accordance with the procedure set out in paragraph 5.2.
- 5.2 A Dispute referred for determination under paragraph 5.1 shall be resolved as follows:
 - (a) by referral in the first instance to the decision of the Contract Manager of the Company and the Contract Manager of the Producer;
 - (b) if a Dispute is not resolved within 14 days of its referral pursuant to paragraph 5.2(a), then either party may refer the Dispute to arbitration under the rules from time to time in force of the Scottish Arbitration Centre (**SAC**) (**SAC Rules**), which SAC Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The parties will seek to reach agreement on the identity of the sole arbitrator within 10 Business Days after the initiation of arbitration. If the parties do not reach agreement on the sole arbitrator, then the appointment of the sole arbitrator shall be made by the SAC, at the request of either party. The seat, or legal place, of arbitration

² AG Note: to be discussed further, noting that the Regulations don't automatically recognise force majeure.

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shall be Edinburgh. The language to be used in the arbitration shall be English. The governing law of the arbitration agreement shall be Scots law.

5.3 Nothing in this paragraph 5 shall preclude a party from taking legal proceedings in the courts at any time.

6 Notices

6.1 Notices under this Agreement shall be in writing and sent to a party's registered office as set out on the first page of this Agreement. Notices may be given, and shall be deemed received:

(a) In the absence of evidence of earlier receipt, if a notice is:

(i) delivered by hand:

(A) between 9.00 am and 5.00 pm on a Business Day (such time period being referred to as within **Business Hours**), it will be deemed received when so delivered; or

(B) outside Business Hours, it will be deemed received at 9.00 am on the next Business Day after the time of delivery;

(ii) sent by post:

(A) on a Business Day, it will be deemed received at 9.00 am on the second Business Day after the day on which it was posted; or

(B) not on a Business Day, it will be deemed received at 9.00 am on the third Business Day after the day on which it was posted.

6.2 A notice given under this Agreement is not validly served if sent by email.

7 Further assurance

Each party shall (at its own expense), and shall use all its reasonable endeavours to procure that any relevant third party shall execute such documents and do such acts and things as the other party may reasonably require to give to that party the full benefit of this Agreement.

8 Assignment

No right, interest, or obligation arising under this Agreement may be assigned, transferred or otherwise disposed of or dealt with, in whole or in part, by any party without the prior written agreement of the other party.

9 Third party rights

Unless this Agreement expressly states otherwise (which includes any provision expressed to be in favour of any person who is not a party), a person who is not a party to this Agreement has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of, or enjoy any benefit under, this Agreement.

EIR Review 298347 – Additional Document 4**11 Not a partnership**

Nothing in this Agreement will create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between or among any of the parties.

10 Announcements

10.1 Subject to paragraph 10.2 and without prejudice to paragraph 11 (Confidentiality), no announcement, public statement, document or circular relating to the existence or subject matter of this Agreement or any ancillary matter will be made, published or issued by or on behalf of any party to this Agreement without the prior consent of the other party.

10.2 Any party may make an announcement concerning the subject matter of this Agreement or the transactions contemplated by this Agreement if (but only to the extent) required by:

- (a) the law of any relevant jurisdiction;
- (b) any regulatory body to which it is subject; or
- (c) any securities exchange on which its shares (or those of its holding company) are listed, provided that, to the extent permitted by law:
 - (d) prior to making any such announcement, the relevant party will endeavour to agree the contents of such announcement with the other party before its release, where it is reasonably practicable to do so; and
 - (e) the relevant party will in any event notify the other party of any such announcement made.

11 Confidentiality

11.1 Subject to paragraph 11.3, the Company shall:

- (a) keep all Producer Confidential Information confidential and only use it for the purpose of performing its role as a Scheme Administrator of the Scheme; and
- (b) not disclose any Producer Confidential Information to a third party, other than to such of its Representatives as will of necessity acquire it as a consequence of the performance of that party's obligations under this Agreement or in the performance of the Scheme.

11.2 Subject to paragraph 11.3, the Producer shall:

- (a) keep all Company Confidential Information confidential and only use it for the purpose of performing its obligations under the Scheme; and
- (b) not disclose any Company Confidential Information to a third party, other than to such of its Representatives as will of necessity acquire it as a consequence of the performance of that party's obligations to the Producer.

11.3 Paragraphs 11.1 and 11.2 shall not apply to any Company Confidential Information or Producer Confidential Information to the extent that it:

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- (a) comes into the public domain other than through breach of paragraphs 11.1 or 11.2;
- (b) is required or requested to be divulged by any court, tribunal or governmental authority with competent jurisdiction to which the party in question is subject, wherever situated;
- (c) is required to be disclosed by law or by any relevant national or supranational regulatory authority;
- (d) is demonstrably known to the receiving party at the date of first disclosure of the information in question to the receiving party; or
- (e) is disclosed with the disclosing party's prior written approval to the disclosure.

11.4 Each party shall:

- (a) make sure that its Representatives comply with this paragraph 11. If asked for, the parties shall make sure that their Representatives sign a confidentiality agreement reflecting the terms of this paragraph 11; and
- (b) tell the Company Secretary of the Company (in the case of Company Confidential Information) or the Producer (in the case of Producer Confidential Information) immediately if it discovers that this paragraph 11 has been breached.

11.5 In the event that a party, its Representatives or anyone to whom they transmit any Company Confidential Information or Producer Confidential Information, becomes (or it is reasonably likely that it or they shall become) legally compelled to disclose any such Company Confidential Information or Producer Confidential Information, prompt notice of such fact shall be given to the Company (in the case of Company Confidential Information) or the Producer (in the case of Producer Confidential Information) prior to any disclosure.

11.6 The obligations in this paragraph 11 shall continue without limit in time and shall survive the termination of this Agreement.

12 Exercise of rights

12.1 In relation to the rights of each party under this Agreement:

- (a) rights may be exercised as often as necessary;
- (b) rights are cumulative and not exclusive of any right or remedy provided by law;
- (c) rights may be released or waived as regards any party without affecting the liability of any other party; and
- (d) rights may only be waived specifically and in writing.

12.2 Any delay in exercising, or non-exercise of, any right of any party under this Agreement will not constitute a waiver of that right. A waiver of any right of any party under this Agreement is not a waiver of any other breach, and will not prevent any further or subsequent exercise of that right.

13 Entire Agreement

13.1 This Agreement sets out the entire agreement and understanding between the parties to them in connection with the subject matter of this Agreement.

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- 13.2 Without affecting paragraph 13.1, this Agreement supersedes all, if any, prior negotiations, representations, undertakings and agreements (whether oral or written) on any matter which is the subject of this Agreement.
- 13.3 Each of the parties acknowledges that it is not relying on any statement, warranty, representation, undertaking, collateral contract or other assurance given or made by or on behalf of any of the other parties or the Company (or any of their respective agents, officers, employees and advisers) in relation to the subject matter of this Agreement which is not expressly set out in this Agreement (**Non contractual Assurance**).
- 13.4 No party shall have any claim or remedy in respect of any Non-contractual Assurance. To the extent that any of the parties has been given any Non-contractual Assurance (including, for the avoidance of doubt, any innocent or negligent misrepresentation or misstatement), the relevant party unconditionally waives any claims, rights or remedies which it might otherwise have in relation thereto.
- 13.5 Nothing in this paragraph 13 or otherwise under this Agreement shall exclude or limit any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

14 Alterations

Any alteration to this Agreement must be in writing, refer specifically to this Agreement and be duly executed by each party, PROVIDED THAT as set out in clause 2.3, the Company shall be entitled to amend the Policies (or any of them) from time to time as it sees fit but shall give the Producer such advance notice of the amendments in question as is reasonable in the circumstances. Any such Policy amendments shall take effect from the date on which the amendments are notified to the Producer (or such later date as the Company may specify).

15 Severability

- 15.1 If any provision in this Agreement is or at any time becomes invalid, illegal or unenforceable in whole or in part, the relevant provision will apply with whatever modification or deletion is necessary to ensure that it is valid, legal and enforceable.
- 15.2 To the extent that it is not possible to modify or delete any provision under paragraph 15.1, the relevant provision (or part of it), to the extent that it is invalid, illegal or unenforceable, will not apply and will be deemed to not form part of this Agreement.
- 15.3 The validity, legality and enforceability of the remainder of this Agreement will not, subject to any modification or deletion under paragraph 15.1 and/or the effect of paragraph 15.2, be affected, provided that the operation of this paragraph 15 would not negate the commercial intention of the parties in entering into this Agreement.

16 Payment of costs

Except where this Agreement provides otherwise, each party shall pay its own costs and expenses incurred in relation to the preparation, negotiation, entering into and completion of this Agreement.

17 Continuing effect of this Agreement

- 17.1 All provisions of this Agreement shall, so far as they are capable of being performed or observed, continue in full force after (and notwithstanding) the Contract Date.

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17.2 Except for those matters then already performed, the entering into this Agreement shall not constitute a waiver of any party's rights in relation to this Agreement.

18 Process Agent

18.1 Each Producer whose address for the service of notices is outside Scotland:

- (a) undertakes, within 10 Business Days after the Contract Date, to irrevocably appoint a process agent (each a **Process Agent**) as its agent to accept service of process in Scotland in relation to any document initiating or otherwise connected with any court proceedings arising out of or in connection with this Agreement and to notify the Company of the identity of such Process Agent;
- (b) agrees to notify the Company in writing of any change of address of such Process Agent within 10 Business Days of the change of address; and
- (c) if such Process Agent ceases to be able to act under this paragraph 18 or ceases to have an address in Scotland, irrevocably agrees to appoint a replacement process agent (**New Process Agent**) reasonably acceptable to the Company and after such appointment reference to the Process Agent in this paragraph will be read as reference to the New Process Agent and to give to the Company notice of such appointment within 10 Business Days.

18.2 Any such document will be validly served on each Producer whose address for the service of notices is outside Scotland by being sent by prepaid first class post to or delivered to the Process Agent notified by them pursuant to paragraph 18.1 or left at the relevant Process Agent's address, whether or not forwarded to or received by the Producer in question.

18.3 Without affecting the effectiveness of service under any other method set out in paragraph 6 (Notices), service of such process upon the Process Agent at its address given in paragraph 18.1 or elsewhere within the jurisdiction of the courts of Scotland for the time being in force will constitute good service on the Producer in question

19 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) references to this **Agreement** include the Terms and Conditions and the Policies, as appropriate;
- (b) references to a **party** includes the party's personal representatives, successors and permitted assigns;
- (c) reference to a **paragraph** is a reference to a paragraph contained in these Terms and Conditions;
- (d) reference to a numbered **Regulation** is a reference to that regulation of the Regulations;
- (e) references to a **person** include any individual, firm, company, partnership or other body (with or without separate legal personality);
- (f) references to one **gender** includes all genders;

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- (g) references to the **singular** include the **plural** and vice versa;
- (h) the words **other, includes, including, in particular** and words of similar effect will not limit any general words which precede them and any words which follow them will not be limited in scope to the same class as the preceding words;
- (i) the headings and contents table of this Agreement are for convenience only and do not affect its interpretation;
- (j) a reference to **legislation** is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement; and
- (k) where any term is defined in the Regulations and is not separately defined in this Agreement, that term shall have the meaning set out in the Regulations.

20 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means the agreement between the Company and the Producer, including (for the avoidance of doubt) the Terms and Conditions and the Policies

Associate means, as regards a party, a holding company of that party or a subsidiary of that party or its holding company, and for the purposes of this definition "holding company" and "subsidiary" have the meanings given to them by section 1159 Companies Act 2006

Business Day means any day (other than a Saturday or Sunday) on which commercial banks are open for business in Edinburgh

Company Confidential Information means all written, electronic or oral information, documents and materials which is confidential or proprietary to the Company, including the terms of this Agreement

Contract Date means [the date of this Agreement]

Contract Manager means the person appointed by a party to be that party's point of contact in relation to the management of this Agreement as notified by either party to the other party from time to time

Dispute has the meaning given in paragraph 5.1 of the Schedule

Force Majeure means in relation to a party, circumstances beyond the reasonable control of that party, including acts of god, acts of any governmental or supranational authority, war, pandemic or epidemic, national emergency, strikes or other industrial disputes (other than strikes or industrial disputes affecting any staff of the Company or the Producer)

Functions and Obligations means the functions of a Scheme Administrator for the purposes of the Regulations, including the functions specified in regulation 13(2) of the Regulations, and the obligations of a Scheme Administrator, including the obligations specified in regulation 16 of the Regulations

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Intellectual Property Rights means all current and future copyright, patents, trade marks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any country of the world

Insolvency Event means:

- (a) the party in question becomes unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (assuming, if necessary, that section 123 aforesaid applies to the party in question);
- (b) a winding-up petition is presented in respect of the party in question;
- (c) the party in question enters into liquidation either compulsory or voluntary or a provisional liquidator is appointed in respect of the party in question;
- (d) notice of intention to appoint an administrator is served in respect of the Retailer or an application for an administration order in respect of the party in question is filed at court;
- (e) an administrator, administrative receiver, receiver or manager or similar officer is appointed in respect of the whole or any part of the party in question's assets;
- (f) the party in question proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors;
- (g) distress execution or other legal process is taken or steps are taken to enforce any encumbrance over all or part of the assets and/or undertaking of the party in question;
or
- (h) the party in question is subject to an event analogous to any of (a) to (g) above in any other jurisdiction

Logo means the logo created by or for the Company for use in relation to the Scheme and in its capacity as the Scheme Administrator

Policies means the policies published by the Board from time to time, and **Policy** shall be construed accordingly

Producer has the meaning attributed to it in the Regulations

Producer Confidential Information means all written, electronic or oral information, documents and materials which is confidential or proprietary to the Producer or relates solely and exclusively to the business of the Producer

Regulations means The Deposit and Return Scheme for Scotland Regulations 2020, adopted in 2020 to implement the Scheme, as such regulations may be amended or superseded from time to time

Representatives means the directors, officers, employees, agents and/or auditors of, and the professional advisers to, the party in question

Scheme means the Deposit Return Scheme for Scotland, as implemented by the Regulations

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Scheme Administrator has the meaning attributed to it in the Regulations

SEPA means The Scottish Environment Protection Agency (and any replacement thereof or successor thereto, for the purposes of the Regulations)

Termination Date means the date of termination of this Agreement

Terms and Conditions means the terms and conditions set out in the Schedule to this Agreement, as amended from time to time

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Policy Document No. 1: Product registration, marking and coding

1. Introduction

REDACTED

2. Data

REDACTED

3. Charging

REDACTED .

4. Future Development

CSL will continue to evaluate changes in technology that may be used to improve overall environmental impact, reduce or eliminate the risk of fraud and reduce overall costs e.g. RFID, QR coding. Whilst recognising a level of permanency in building an infrastructure CSL will, wherever economically viable, design its infrastructure and processes to maximise the potential for adoption of future technological enablers.

EIR Review 298347 – Additional Document 4Policy Document No. 2: **REDACTED**

Policy Document No. 3: Fraud Prevention and Mitigation Measures

As highlighted in Technical Papers 1 and 2 CSL faces financial risk from the fraudulent reimbursement of deposits on containers for which it has not received the initial deposit or producer fee. This may arise for various reasons such as a result of scheme containers returned not purchased in Scotland (UK wide SKUs), organised fraudulent activity or under reporting of issues by producers. The impact of this could result in higher producer fees for all, and ultimately the financial failure of CSL unless measures are put in place to mitigate against this.

CSL intends to pursue all cases of fraudulent activity it detects. A general principle of the company is to ensure equality for all members and stakeholders, and the fraudulent actions of one party will not be allowed to affect the financial position of other parties.

For these reasons CSL considers it appropriate to strongly recommend the use of measures such as Scotland specific barcodes/SKUs and/or a deposit mark to help prevent fraud and make the Scheme as successful as possible; such requirements will be subject to an appropriate materiality threshold, set by the Board. CSL will always ensure that, as part of any policy that is adopted, there is an alternative to requiring packaging measures such as Scotland specific barcodes/SKUs, which will include an increased producer fee for the producer/SKUs in question.

CSL will employ procedures, technological solutions (applications and possibly AI solutions) to identify abnormal trends and fraud investigators to minimise the risk of fraud against CSL and its producer / importer clients.

Fraudulent activity will be primarily identified as a result of monitoring return rates by SKU **[REDACTED]**. Without abnormal activity monitoring, CSL is likely to be responsible for financing the effects of fraudulent activity where the return rate remains below 100% (and is thus not specifically identifiable as fraud). CSL will however use technology to assist its fraud investigators **[REDACTED]**.

The cumulative return rate will be calculated and reconciled monthly immediately following receipt of the issues data from the producer by comparison with returns recorded to the same cut-off date. Using a cumulative return rate eliminates the variance in cycle time between issue and return. **[REDACTED]**.

[REDACTED].

Investigations undertaken by CSL will embrace all areas of the outbound and inbound supply chain and CSL requires that participants will assist in these investigations to identify the perpetrator. CSL will pursue any party found to be perpetrating any fraud against the scheme in order to recover its costs and losses and/or support the regulator in taking appropriate enforcement action. Certain fraudulent activities will also lead to breach of the contract between a producer and the SA.

Furthermore CSL will design its systems capability and infrastructure to enable the adoption of solutions not currently sufficiently developed for full live operations e.g. serialisation / QR codes which will enhance its capability to eliminate fraudulent activity.

CSL takes fraud extremely seriously and will work collaboratively with the Police, the Regulator and any other legitimate body to investigate fraudulent activity. CSL reserves its right to share any data or material in its possession with any legitimate authority.

EIR Review 298347 – Additional Document 4**Policy Document No. 4: Return Point Handling Fee - Principles****1. Introduction**

The regulations provide for the retailer / return point operator to recover defined reasonable handling costs from the producer. CSL will undertake to do this on behalf of the producers it represents. CSL will compensate return point operators for the additional costs incurred exclusively for the processing of scheme containers, and defined in the regulations, by the payment of a fair and reasonable Return Point Handling Fee (RHF).

Part 2, paragraph 22 of the Company's Membership Agreement makes the following provision with regard to the calculation of the RHF:

Neither the Board, the Executive Leadership Team nor any Member will determine the Return Point Handling Fees. Instead, an appropriate independent entity (who should not be the Company's auditors or the accountants appointed to act by the Board on day-to-day matters relating to the Company) will be appointed by the Board, with input from the Strategic Advisory Group and such other persons as the Board considers appropriate, to calculate the Return Point Handling Fees based on agreed and published parameters. This will be a transparent and independent process and a report will be published at least annually regarding the Return Point Handling Fees. In carrying out its task, such independent entity shall be entitled to consult such persons as the independent entity considers appropriate.

The RHF will be calculated for each type of return point in line with the regulations:

- Automatic – via reverse vending machines (RVMs)
- Manual return point including open loop hospitality
- Closed loop hospitality
- Home delivery (Takeback)

[REDACTED]

EIR Review 298347 – Additional Document 4**Policy Document No. 5: Packaging Collection**

CSL's objective is to collect all scheme packaging on behalf of producers at the lowest cost whilst simultaneously minimising the environmental impact of such an operation and accommodating any storage constraints of Return Point Operators. To achieve this CSL will make maximum use of existing capacity and relevant operations, exploiting current empty miles and diminishing loads in transport and spare or redundant capacity in existing waste operations.

CSL will, through these third party contract operations, operate a network that is modelled to determine the optimum balance between cost and environmental impact.

CSL will endeavour to ensure that the materials collected are handled and processed in such a way to maximise the recovery rate and potential for reuse thereby promoting an effective circular economy.

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Policy Document No. 6: [REDACTED]

Policy Document No. 7: Producer Specific Data Interchange & Formats

This policy will cover the rules and procedures governing the exchange of information between CSL and each of the producers who have appointed it. Its main purpose will be to ensure standardisation of data parameters, format and delivery method, including timing. Over time it could be extended to include direct data connections between CSL and the management systems used by producers.

In general there are three categories of data that will be shared by producers:

1. Registration data

Registration data will comprise the initial dataset required by CSL to support the establishment of the contract and the working relationship between the two companies. A subset of this will be determined by the registration requirements defined by SEPA. Much of the data will be required to be confirmed and refreshed annually although some data, such as contact details may require update on a more frequent basis.

Another subset of this data is that associated with containers and SKUs used by the producers. All data in this category will require to be updated as changes occur (e.g. new products introduced). CSL will investigate, during detailed design, the nature of the linkage between SKU and container to minimise data input; this will minimise data input in instances where one container type is used across multiple SKUs.

As part of the detailed design of its core IT systems CSL will also investigate optimum methods for receipt of this data e.g. electronic interface (both pull and push) / user portal and possibly third party interfaces e.g. GS1.

2. Production data

All pertinent data will be managed and retained to meet CSL's obligations under the regulations operating as a Scheme Administrator on behalf of producers.

Production (issues to the market) data will be shared monthly and will comprise the dataset used to support day to day operation of CSL. The majority of the data relates to the scheme materials, by SKU, placed on the market in the preceding month.

CSL's IT system will be developed to receive data in a standard format. That format will flow into this policy document and will include aspects like:

- Encryption
- Units (e.g., grams, millilitres)
- Numerical format (e.g., one decimal place)
- Technical elements (e.g., 64bit)

3. Financial data

Given the timescales for invoices and remittance, necessary to ensure the prompt reimbursement of redeemed deposits, CSL will invoice electronically. This will normally be via an electronic system to system interface using industry standards or in the case of smaller producers who may not have the technical capability for such an interface via email. All remittances from producers must be via direct debit.

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The data standards policy will lay out the processes and techniques used to validate data transmission and identify errors that may occur.

The policy will define the timings in a month or year for data receipt by CSL to ensure other SA activities can be successfully completed.

The policy will contain a range of non-functional requirements in the policy, including data retention, security, and confidentiality.

Where there is data issued by CSL to the producer the policy will be similarly clear in the standards and requirements for that process. At this stage it is envisaged that CSL will generate reports on the collection performance of each SKU, and ad hoc exception reports if there are any issues with the data received from producers. It is expected that CSL's IT system will allow producers to access up to date information through a secure personalised portal. Emails will be used to alert users when new information is available outside of the normal reporting timetable. Paper reports will not be produced routinely.

Finally the policy will lay out the range of penalties that will be charged, and identify any other liabilities that may be incurred if the policy requirements aren't met by the producer. There are a range of criminal infringements associated with failure to share data, and the policy will also formalise the permission of CSL to share any aspect of producer data with the regulator, in support of any regulator investigation or in support of any suspicion of infringement.

In future the policy may be extended to accommodate direct data sharing between CSL's IT system and the production management systems of producers. If any industry standard data sharing protocols already exists for well-known packages in use (e.g., SAP) then as far as possible CSL will incorporate this into the design of their IT system. But there is no intent to mandate this interface at this pre-launch stage, given the time and investment required.

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Policy Document No. 8: Standards for Ancillary Container Materials

This policy will be limited in scope at launch of the scheme, but is expected to develop as the scheme becomes more mature. Its purpose will be to encourage adoption of ancillary materials (those materials associated with a container over and above the core material) which will improve the recyclability of containers and thereby improve scheme efficiency and cost-effectiveness. Materials in scope are those used for labels, glues, lids, wraps etc. This approach has been adopted successfully in many mature schemes across Europe.

[REDACTED]

The development of this policy will be done in collaboration with producers to achieve a balance between scheme improvement, and any production or financial impact on producers.

APPENDIX 5 – BRANDING AND COMMUNICATIONS PLAN

1 Introduction

This is the communications and branding plan to support the launch of Circularity Scotland Limited (CSL), its promotion as a Scheme Administrator (SA) for the Deposit Return Scheme (DRS) in Scotland, and the ongoing achievement of CSL's performance objectives as a SA. Given the date of production of this document, there are areas of the plan which require further work, and as that work is completed over the next few months this plan will be updated.

The plan covers the following areas:

- Creation of a brand identify for CSL and for the DRS
- The activities required to promote the existence of CSL as a SA
- Specific operational objectives in support of key events up to and after launch
- The period around go live of the scheme
- Communications activities to support achievement of CSL's objectives once the scheme is live

2 Branding

Our first communications priority will be to establish company branding, name and positioning, together with organisational vision and values. These will inform the brand identity, look and feel and tone of voice, and guide our overall communications strategy, plan and key messages.

This will build on some of the work which producers have already contributed to through participation in the Communications working group of the Implementation Advisory Group (led by Zero Waste Scotland and their agency Union). Clearly this work will be subject to extensive review, given the passage of time and the development of how the scheme will operate. But given the formal approach followed, and the contribution from a range of producers (many of whom will become members of CSL) we anticipate much of the existing work forming the basis of the completion of the branding work.

The work will mainly focus on the brand identity of the scheme, but we will also develop and enhance appropriate corporate branding for CSL as a separate legal entity. For the scheme to be a success it is imperative that our brand is highly trusted and instantly recognisable.

Our vision and values will be embodied in the brand, informing all our communications and operations, including corporate social responsibility (CSR) ambitions.

More detail will be developed in due course, and the process used so far is a well-recognised methodology, but in summary the work stream will consider:

- The Verbal Identity of the scheme (vision, purpose, values that we want consumers to associate with the scheme, tone of voice and language guidance for messaging to people and companies)
- The Visual Identity of the scheme (logo, colour palette, typography, imagery and design guidelines for any form of representation of the visual identity)

The early work developed three territories – the position or perception that a company wants to set in the minds of customers/stakeholders – and whilst we have not conducted formal testing of these territories, they align well with the core principles of CSL as laid out in the Membership Agreement:

- Changing the world
- Making it easy for Scotland
- Small actions, big impact

The branding work stream is one of the early packages of work that will commence once CSL is established.

There are other areas which will be considered as part of this work stream:

- Brand ambassadors, especially to target young people on digital channels,
- co-opting influencers, would be important to reach the difficult younger segment, whom we know from research are harder to spur into action
- working with charities, wider third sector organisations, and key public sector groups (e.g., schools)

3 Communications Plan

3.1 Introduction

The communications plan is an essential element in delivering a successful scheme launch, and in achieving the collection targets placed upon the SA. One of the earliest recruitment appointments will be a marketing lead, and the appropriate agencies to provide professional input and delivery, but there is already a clear high-level view of the nature of the communications plan.

3.2 Objectives

The plan objectives span several years and many different segments and messages, and they will be refined and developed over the coming months. They can be summarised as follows:

- Promote the existence and values of CSL, and its role in DRS
 - Ensure that all relevant stakeholders are aware of the company, its role and its mission/objectives
- Raise awareness of the scheme across all affected segments and stakeholder groups
 - Supports the next three objectives by raising general awareness of what DRS is, when it comes and what benefits it will bring
- Identify and connect with all Return Point Operators
 - Ensure that the SA knows the location and nature of return points, and that all companies with collection obligations are aware of CSL and the need to engage
 - Establish business readiness connections to ensure collection capacity is ready at launch
- Identify and connect with all producers
 - Sign up customers to CSL through the producer agreement
 - Establish business readiness connections to ensure reporting and labelling changes are completed before launch
- Support an effective scheme launch
 - Connect with and educate consumers on the scheme, what they must do when, and the benefits of participation
- Build and sustain scheme performance

- Monitor scheme performance across various stakeholder segments and demographic/geographic groupings, and launch tailored campaigns to address any performance shortfall
- Maintain and enhance the reputation of CSL and the DRS
 - Continue to raise the profile and positive perception of CSL and the DRS through broad stakeholder engagement, events, and a range of other interventions

3.3 Core Plan Activities

The following sections provide details of the specific campaigns required to meet plan objectives. There will be a range of preliminary activities which support all communication activities, as follows:

- Appoint/develop branding and communications resource
 - The detail of this activity is covered below, and addresses staffing, agencies and IT support/data management. We anticipate a full time communications team of two, supported by creative and press/PR agencies to deliver campaigns and assist in the establishment of CSL's identity
- Stakeholder mapping and segmentation – we will carry out a stakeholder mapping exercise, to identify those organisations and groups with a stake in the success of DRS. The first phase of our communications plan will look to build relationships with these organisations and businesses, and to identify joint communications opportunities, and map their relevant communications channels, to increase our impact and reach, through both B2B and B2C routes.
Key segments will include:
 - Producers (including the various types of organisations like importers who will need to follow their relevant obligations under the regulations)
 - Return Point Operators (mostly retailers but also other groups who may wish to set up a return point)
 - Consumers - more details below
 - Potential suppliers to the SA
 - Scottish Government
 - SEPA
 - Trade Associations – although likely related to producers and RPOs this group will have a partnership role to help extend the reach of messages, and provide feedback
 - Local Authorities
 - Environmental NGOs
 - Third sector organisations impacting, or impacted by, DRS
- Channel development
 - A simple website has already been prepared but a fully featured site will be a key channel in the support of messaging and the soliciting of feedback from site visitors
 - A presence on the core social media channels has already been acquired, but in support of campaigns, and for ongoing promotional purposes, CSL's presence on these channels will be ramped up
- Develop plan and campaign success measures, and measurement methods
 - Develop and test metrics and indicators to allow assessment of campaign success
 - Develop the methods to collect and report such metrics (e.g., consumer research, online polls)

3.4 Key Events and Campaigns

Much of the plan objectives will be met through campaigns focused on specific events. This section of the plan provides detail on the known events at this time, and an overview of the elements of the associated campaigns that will be delivered.

3.4.1 Approval of CSL as a Scheme Administrator

The main objectives of this campaign are:

- Promote the existence and values of CSL, and its role in DRS
 - Ensure that all relevant stakeholders are aware of the company, its role and its mission/objectives
- Raise awareness of the scheme across all affected segments and stakeholder groups
 - Supports the next three objectives by raising general awareness of what DRS is, when it comes and what benefits it will bring

Audiences	Messages	Delivery Methods	Collateral/Materials
Current and prospective members Producers and retailers Associated trade press Mainstream press Potential suppliers to the SA and to other stakeholders (e.g., RVM suppliers) Potential investors Environmental groups Organisations who could form part of the Strategic Advisory Group	<ul style="list-style-type: none"> • CSL has been approved to act as a SA • Here is our plan to deliver the scheme • Methods to contact the SA 	<ul style="list-style-type: none"> • Web site • Social media channels • Opinion pieces in trade press • Targeted interviews • Partners (e.g., Trade Associations) • Members 	Briefing and visuals for each of the channels

Timing – under the current application schedule this campaign should execute in early Spring 2021

3.4.2 RPO Identification and Engagement

The main objectives of this campaign are:

- Identify and connect with all Return Point Operators
 - Ensure that the SA knows the location and nature of return points, and that all companies with collection obligations are aware of CSL and the need to engage
 - Establish business readiness connections to ensure collection capacity is ready at launch

Audiences	Messages	Delivery Methods	Collateral/Materials
Any organisation with obligations to act as an RPO: <ul style="list-style-type: none"> • Retail organisations • Hospitality organisations • Hotels • Takeaway and fast-food chains/premises • TAs associated with these sectors • Trade press associated with these sectors 	<ul style="list-style-type: none"> • A reminder of DRS and RPO obligations • CSL, and its approved role as the SA • What the SA will do for the RPO, and RPO for SA • Why it's important the SA and each RPO connects • The way to connect and register 	<ul style="list-style-type: none"> • Web site • Social media channels • Adverts in trade press • Partners (e.g., Trade Associations) using their existing contact relationships • Members • Local Authorities, and their associated Environmental communication channels RPOs will be pointed to a registration portal provided by the SA	Briefing and visuals for each of the channels Registration portal

Timing – ideally this campaign will commence within a few months of CSL being approved as a SA. Limiting factors will be the recruitment of staff to manage the campaign and support enquiries, and the development of a registration portal. Estimated commencement Autumn 2021. Elements of the campaign will continue for some period after launch, to catch late registrants.

3.4.3 Producer Identification and Engagement

The main objectives of this campaign are:

- Identify and connect with all producers
 - Sign up customers to CSL through the producer agreement
 - Establish business readiness connections to ensure reporting and labelling changes are completed before launch

Audiences	Messages	Delivery Methods	Collateral/Materials
Any organisation with producer obligations in the regulations: <ul style="list-style-type: none"> • Producers with standard UK-based sale and supply chains • Retailers acting as producers • Importers 	<ul style="list-style-type: none"> • A reminder of DRS and Producer obligations • CSL, its approved role as the SA, and the implications for producers • What the SA will do for the Producer, and Producer for SA • Benefits to a producer in appointing CSL as the SA • Fees/other costs (if any) for appointment • The appointment process • The way to connect and register 	<ul style="list-style-type: none"> • Web site • Social media channels • Adverts in trade press Particular focus on press covering import sector • Partners (e.g., Trade Associations) using their existing contact relationships • Members Producers will be pointed to a registration portal provided by the SA	Briefing and visuals for each of the channels Registration portal

Timing – this campaign will be conducted in several phases, given the complexity of the messages and the wide range of current understanding within the producer community. Awareness raising will commence within a few months of CSL being approved as a SA. The full campaign will launch once the process, technical and organisational capacity is in place to deal with c4500 contract sign-ups. As for RPO registration a portal will be required, and additional support staff to deal with the more complex enquiries that could be expected. Elements of the campaign will continue for some period after launch, to catch late registrants, before the process moves into business as usual to register new entrants to the Scottish market.

3.4.4 Scheme Launch

This campaign will be the highest profile campaign, with the largest audience and greatest spend. Its objective is:

- Support an effective scheme launch
 - Connect with and educate consumers on the scheme, what they must do when, and the benefits of participation

A consumer campaign will be developed to target behaviour change based on attitudinal factors in specific demographics. This campaign will need to evolve to reflect different stages of consumer understanding and adoption of the scheme and will be underpinned by rigorous analysis to determine which interventions have greatest impact and where different approaches are required. The plan will ensure geographical reach across Scotland and accessibility by all audiences with particular needs. Early engagement with stakeholders (e.g., Local Authorities, Scottish Government) will explore opportunities to work together.

Audiences

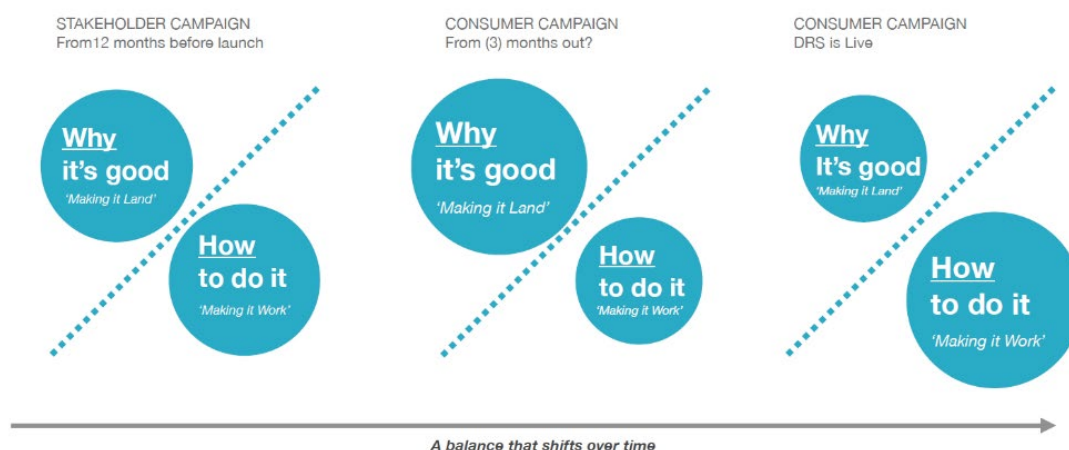
Consumers in Scotland. This broad segment will be broken down by a range of demographic factors, and influenced by work already conducted. For example, the segmentation assessed by Zero Waste Scotland and its agency (Union) developed 5 segments covering the entire Scottish population:

- Rural Families
- Suburban Wealth
- Golden Years
- Less Advantaged
- Progressive Urbanites

This comprehensive work will be developed and updated to support full segmentation, and development of specific messages and delivery methods.

Messages

Key messages will be developed based on thorough research and testing, and will be assessed against the brand, vision and values. The messages will be developed to reinforce the scheme benefits and drive the delivery the targets. They will follow the simple evolutionary approach develop during early branding work:



- Why the scheme is good
- How to do it

A hierarchy of messages will be developed, with the most simple and universal at the top, and sub messages added as required, to convey key information to specific audiences. For example, different demographic groups may require a slightly different approach. In addition, messages will evolve over time, from pre-launch, through launch, to the post launch and building phase, as the scheme administrator works towards annual collection targets.

For consumers, messaging will align with brand framework, personality and tone. Messages will be developed and targeted to appeal to key consumer segments. For some segments, we will emphasise the importance of how the scheme will work, and getting the 20p back, for other segments, the environmental messaging, and inspiration to do your bit, will be more important. For all segments, the importance of the scheme, how it works and when it launches, the fact that its Scotland's scheme and ease of use will be emphasised. Messages will also shift over time: initially, launching the brand and explaining what DRS is and how it will work, moving to launch date, and why it's important to participate. The set of high-level messages developed for the segments above will be enhanced and tailored to each phase and segment of the campaign:

- Reducing litter (to protect Scottish environment)/Less litter
- Don't lose money
- Scotland doing this together has this impact (on Scottish environment)
- You doing this has this impact (on you/on your local area/on Scottish environment)
- Help a charity by donating
- The impact on Scottish wildlife and environment

Delivery Methods

With a campaign of the scale and complexity, there will be a range of channels adapted for different segments at different stages of the campaign. The detail of this approach will be developed over the coming months, but key channels will be:

- mainstream news and TV
- social media
- instore communications (supermarkets, convenience stores)
- outreach through schools and using children as influencers
- flyers through the door which can be kept and referred back to
- Podcasts and streaming services
- OOH on public transport, and in local areas, doctors' surgeries, pharmacies, community centres, local gyms, swimming pools and libraries
- potential to also consider PR opportunities with news and information channels that facilitate discussion and debate
- tabloids
- participation in/support of relevant consumer-oriented events/exhibitions (e.g., major music festivals)
- sponsorship

For an initiative of this profile, we would expect to engage the services of and association with suitable celebrities/media personalities to help with message delivery and positive assessment of the scheme.

Partnerships

We will rely heavily on support of partnerships to achieve the campaign objectives. We will explore communications and engagement opportunities to secure national reach, engage all sections of society and ensure the highest possible return levels from the earliest stage. This may include, but not restricted to:

- Provision of templates and toolkits to allow individual businesses to develop tailored high quality and consistent communications materials across all channels
- Working with industry associations and membership organisation to use their channels and participate in their events as appropriate
- Engaging local authorities to ensure their support for and participation in communicating how the DRS scheme will impact on household recycling
- Identifying community and special interest groups which can support the achievement of targets and are consistent with the values of the business. This may also build on the Islands Forum which informed the Islands Impact Assessment
- Building exceptional relationships throughout the supply chain, to build advocates, especially through B2C channels, enabling stakeholders to multiply its message through consumer communications.

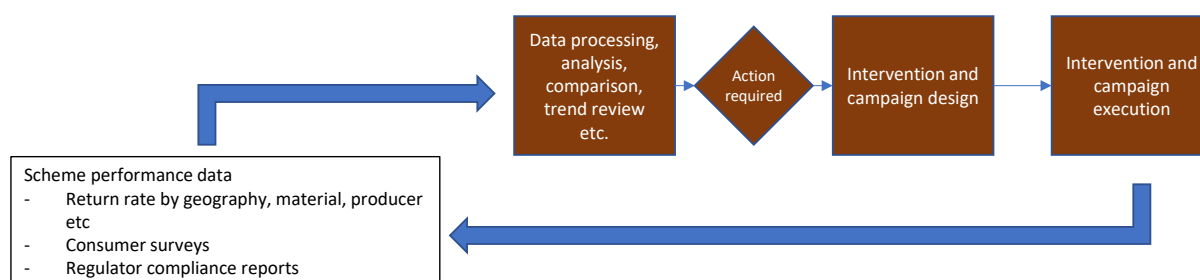
Collateral/Materials

The content and materials used for this campaign will be varied and frequently channel specific. We will rely on specialist agencies for much of the material development. Major elements will include:

- promotional videos/animation for TV adverts, web site and social media channels
- interactive stories/narratives/themed games
- content for digital instore displays (including those on RVMs) and those used in transport networks
- digital content for mobile phone advertising

3.4.5 Other Communications Activity

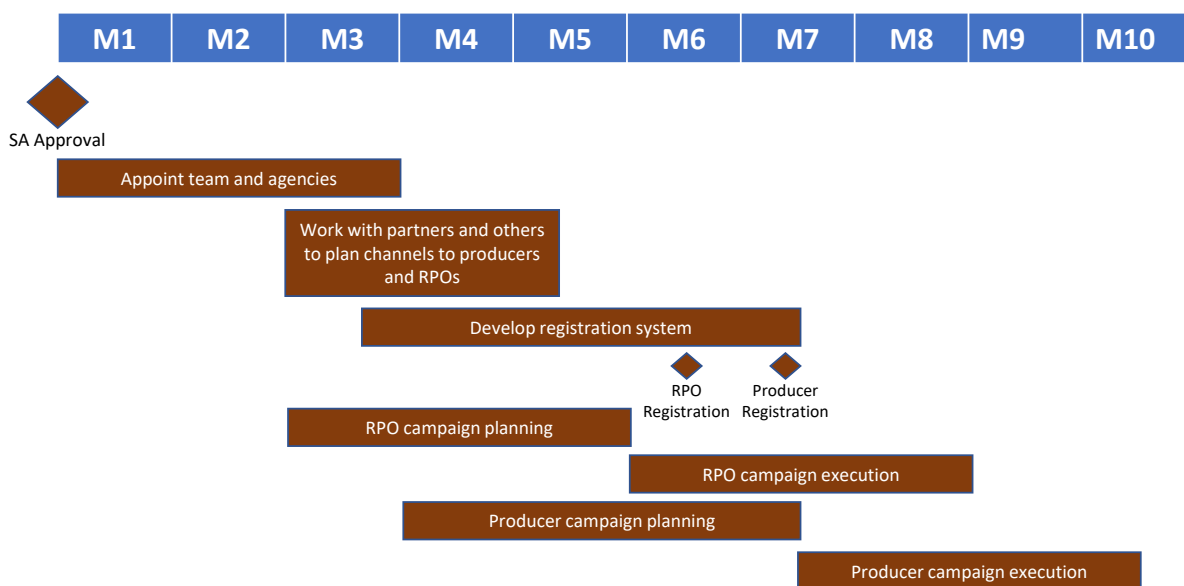
The final core objective of the plan – to build and sustain scheme performance – is less well defined at this stage. It will be delivered through a standard process to assess performance, and initiate additional communication (and other) activity as required, and as follows:



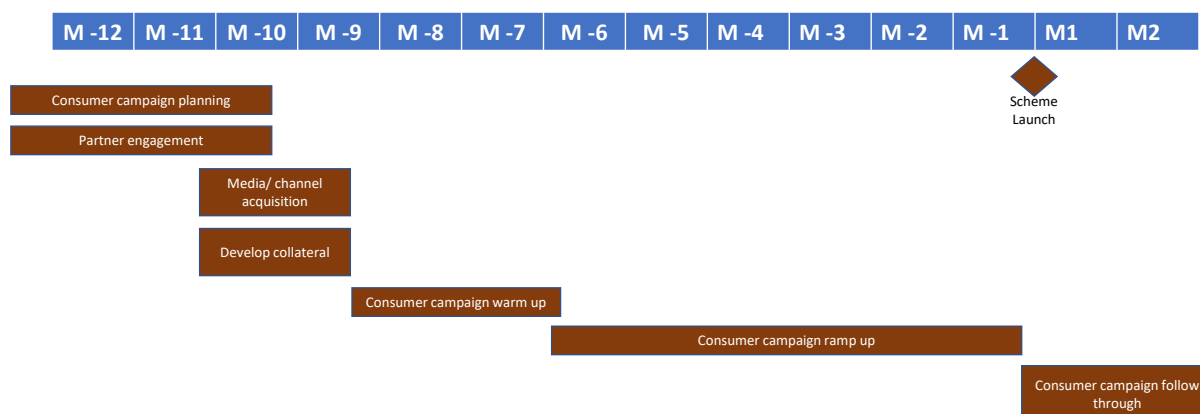
Experiences gained, and collateral and channels used up to go live, will be valuable inputs to this process.

3.5 Timeline

The provisional schedule for producer and RPO communications is as follows:



The following schedule shows the timeline for the consumer campaign in preparation for launch. The timescale units are months before/after the launch date:



3.6 Follow up and Effectiveness Assessment

We will put in place the necessary processes and contracts to allow us to measure the effectiveness of our communications activity and initiation additional activity if necessary.

Proactive communications planning will map areas which are a higher performance risk, informed by factors such as logistical difficulties, attitudinal research, accessibility challenges etc.

Our collection management information will identify any areas of under-performance, this will be underpinned by demographic data and analytics which can inform communications interventions to drive performance. This will include:

- Engaging local authorities to ensure their support for, and participation in, communicating how the DRS scheme will impact on household recycling; and
- Identifying community and special interest groups which can support the achievement of targets and are consistent with the values of the business. This may also build on the Islands Forum which informed the Islands Impact Assessment

3.7 Enablers of the plan

3.7.1 Resource

Effective communications will be at the heart of our business strategy and will be prioritised from inception. We will seek to appoint, as soon as possible, a Head of Communications and Marketing. In addition to building an in-house team this person will be responsible for who will oversee strategic communications, branding, positioning, reputation management and key relationship-building, as well as corporate functions such as crisis communications and public affairs.

3.7.2 IT system

Our IT system will be designed to support comprehensive data and trend analysis. e.g., we will know return rate at each return location, and can overlay GIS demographic data to generate insights relevant to specific locations.

More specialised campaign management systems will be provided by our partners, but we will include communication requirements in our high-level requirements definition and assess the merit in extending the functionality of the SA IT system to support communications and effectiveness monitoring.

3.7.3 Partner agencies

Additionally, we will look to engage appropriate agency support to allow us to deliver a campaign of the scale and reach necessary for a successful launch, and to provide the specific communications expertise required to reach key audiences. This may include creative, design, public relations, marketing, media buying and digital, for example. This support may comprise more than one agency depending on the nature of expertise required.

3.8 Development of the plan

Once CSL has been approved as a SA we will review and refresh this plan and develop more detailed plans for the initial communication events. Our communications team will work with our agencies to assess continually the effectiveness of implementation, and seek additional tools, channels and events to improve future effectiveness. Other events that will be considered are:

- The appointment of senior staff to CSL (e.g., Chief Executive or Chair)
- Promotion of DRS at COP26 in Glasgow in November 2021, independently and/or with stakeholders or investors
- The signing of any major contracts, particularly those associated with new investment
- The opening of any dedicated facilities for the SA (e.g., counting centres)
- Related events relevant to other stakeholders (e.g., the opening of the first RVM installation with a major retailer)
- The launch of any sponsorship programmes that will promote adoption of the scheme, particularly in more challenging segments

APPENDIX 2 – MEMBERSHIP AGREEMENT



Dated

2021



**MEMBERSHIP AGREEMENT
relating to CIRCULARITY
SCOTLAND LIMITED (a
private company limited by
guarantee)**

Important Notice: Addleshaw Goddard LLP is acting only for the Company and no one else in connection with this document and will not be responsible for providing advice to any other

person in relation to such matters, unless expressly otherwise agreed with that person on a case-by-case basis.

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This Agreement is made on

2021

Between

- (1) The persons whose names and addresses are set out in Part 1 of the Schedule to this Agreement (each a **Founding Member** and together the **Founding Members**); and
- (2) **Circularity Scotland Limited**, a private company limited by guarantee (No. SC680460) whose registered office is at Exchange Tower, 19 Canning Street, Edinburgh, EH3 8EH (**Company**).

Whereas

- (A) The Company is a private company limited by guarantee and not having a share capital. The Company was incorporated in Scotland under the CA 2006 on 10 November 2020 with a view to becoming a Scheme Administrator for the purposes of the Regulations.
- (B) This Agreement regulates the operation and management of the Company and the relationship between the Members.

It is agreed

1 Definitions and interpretations

A number of terms used in this Agreement are defined in Part 7 of the Schedule (- Interpretation and definitions) and all such defined terms shall apply throughout this Agreement.

2 General Principles and Rules of the Company

- 2.1 The Company has been established for the purpose of applying to act as, and if appointed to act as, a Scheme Administrator for the purposes of the Regulations.
- 2.2 The Founding Members have developed and recorded in Part 2 of the Schedule to this Agreement a number of guiding principles that the Board, the Company and all Members are expected to adhere to (the **General Principles**).
- 2.3 The Founding Members have also developed and recorded in Part 3 of the Schedule to this Agreement a number of rules relating to the management and operation of the Company that the Board, the Company and all Members are expected to adhere to (the **Rules**).
- 2.4 It is an essential condition of applying for and maintaining Membership of the Company that each Member adheres to the General Principles and the Rules at all times. By applying for and maintaining Membership of the Company, each Member agrees and undertakes to adhere to the General Principles and the Rules for the duration of their Membership of the Company.

3 Company covenants

- 3.1 Subject to clause 3.2, the Company shall at all times:
 - (a) promote the Business and ensure that it operates in accordance with the General Principles and the Rules;
 - (b) transact all of its business on commercial arm's length terms in accordance with policies laid down from time to time by the Board and in accordance with the Operational Plan;

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- (c) maintain at all times full and proper insurance against such business risks and liabilities as the Board may require with an insurance company approved by the Board, on such terms and in such amounts as shall accord with good commercial practice and procure the review of such insurances at least once every 12 months by a reputable insurance broker;
- (d) use all reasonable endeavours to obtain and maintain in full force and effect all permissions, approvals, consents and licences required for the carrying on of the Business;
- (e) in respect of the Company's Intellectual Property Rights:
 - (i) maintain a register of all of the Intellectual Property Rights owned, used or licensed by the Company, including setting out ownership details, steps required to be taken to protect it, and all costs associated with its identification and protection; and
 - (ii) take all reasonable steps to protect the Company's Intellectual Property Rights including renewing and/or extending any patent, registered design, trademark and other such applications required to keep them valid and in force; and
- (f) take all reasonable steps to protect Company Confidential Information.

3.2 The Company shall only be obliged to observe and perform its obligations under this Agreement to the extent that it is permitted by law to do so.

4 Parties bound

4.1 The Company undertakes with each of the Members to be bound by and comply with the terms and conditions of this Agreement insofar as the same relate to the Company and to act in all respects as contemplated by this Agreement.

4.2 Subject to clause 4.3, the Members undertake with each other to exercise their powers in relation to the Company so as to ensure that the Company fully and promptly observes, performs and complies with its obligations under this Agreement and to exercise their rights as Members in a manner consistent with this Agreement.

4.3 The Members shall only be obliged to observe and perform their respective obligations under this Agreement to the extent that they are permitted by law to do so.

5 This Agreement to prevail over the Articles

5.1 In the event of any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, the Members will join in procuring that the Articles are altered to accord with the provisions of this Agreement and the provisions of this Agreement will prevail.

5.2 Each Member agrees with the other Members that it will:

- (a) exercise all voting and other rights and powers vested in or available to them respectively to procure the convening of all meetings, the passing of all resolutions and the taking of all steps necessary or desirable to give effect to this Agreement; and

- (b) not exercise any rights conferred on it by the Articles which are or may be inconsistent with its rights or obligations under this Agreement.

6 Duration

- 6.1 Subject as otherwise expressly provided, this Agreement will continue in full force and effect for so long as there are two or more Members, unless and until the Members, acting by a Joint Special Majority Consent of the Members, agree in writing to terminate this Agreement or until an effective resolution is passed or a binding order is made for the Winding Up of the Company, whichever is the earlier.
- 6.2 The rights of the parties under this clause 6 will be without prejudice to any claim that any party may have against any other party for damages for breach of contract.

7 Costs

Save for any Agreed Costs, each party will pay their own costs and expenses incurred in relation to the negotiation, preparation and completion of this Agreement. All Agreed Costs shall be borne by the Company.

8 Not a partnership

Nothing in this Agreement will create a partnership or establish a relationship of principal and agent or any other fiduciary relationship between or among any of the parties.

9 Further assurance

Each party will (at its own expense), and will use all their reasonable endeavours to procure that any relevant third party will, execute such documents and do such acts and things as the other party may reasonably require to give full effect to the terms of this Agreement and the Articles.

10 Notices

- 10.1 Any notice, consent, request, approval, settlement, election, proposal, claim form for the purposes of serving proceedings or other communication under or in connection with this Agreement (**Notice**) will be:

- (a) in English;
- (b) in writing; and
- (c) delivered by:
 - (i) hand; or
 - (ii) internationally recognised courier service; or
 - (iii) prepaid first class post or another next working day delivery service; or
 - (iv) email,

with delivery pursuant to clauses 10.1(c)(i), (ii) or (iii) being to a postal address in the UK providing proof of postage or delivery and with delivery pursuant to clause

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10.1(c)(iv) being to a valid email address provided by the relevant party for the purpose of receiving notices.

- 10.2 Notices may not be delivered by fax.
- 10.3 References to a **notice under this Agreement** include any notice, claim, demand or other document to be delivered to any party in connection with this Agreement or any dispute arising in connection with this Agreement.
- 10.4 All notices to the Company must be sent to its registered office. All notices to the Members (or any of them) must be sent to the addresses that they provide to the Company on application for Membership of the Company or subsequently notify in writing to the Company.
- 10.5 In proving the giving of a notice, it will be conclusive evidence to prove:
- (a) if delivered by hand, that it was left at the relevant address; or
 - (b) if sent by post, that it was properly addressed and posted;
- in each case in accordance with the relevant details set out above.
- 10.6 A notice will be effective on receipt and, in the absence of evidence of earlier receipt, will be deemed to have been received:
- (a) at the time of delivery if delivered by hand or courier service; or
 - (b) in the case of email, when a successful delivery receipt is generated; or
 - (c) if sent by pre-paid first class post or another next working day delivery service providing proof of postage or delivery to an address in the UK, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service,
- save that if this means that any notice would otherwise be deemed to be received outside normal business hours (normal business hours for this purpose being between 9.00 am and 5.00 pm on a Business Day at the place of receipt of the notice), such notice will be deemed to be received at the start of normal business hours on the next Business Day.
- 10.7 The Company undertakes with each of the Members that it will promptly supply to each of the Members a copy of any notice which may be given to or served on it under this Agreement and which is material to the interests of the Members (in the opinion of the Board, acting reasonably and in good faith).

11 Assignment

- 11.1 Subject to clause 11.2, none of the parties may, without a Joint Special Majority Consent, assign any of their respective rights or obligations under this Agreement.
- 11.2 Any party may assign any rights under this Agreement to any person to whom it has transferred its Membership Interests in compliance with the Articles and this Agreement, provided that such transferee has entered into a Deed of Adherence.

12 Announcements

- 12.1 Subject to clause 12.2 and without prejudice to Rule 11 (Confidentiality), no announcement, public statement, document or circular relating to the specific contents of this Agreement or the day-to-day operations of the Scheme Administrator will be made, published or issued by or on behalf of any party to this Agreement without the prior consent of the Board (such consent not to be unreasonably withheld or delayed).
- 12.2 Any party may make an announcement concerning the subject matter of this Agreement or the transactions contemplated by this Agreement if (but only to the extent) required by:
- (a) the law of any relevant jurisdiction;
 - (b) any regulatory body to which it is subject; or
 - (c) any securities exchange on which its shares (or those of its holding company) are listed, provided that, to the extent permitted by law:
 - (d) prior to making any such announcement, the relevant party will endeavour to agree the contents of such announcement with the Board before its release, where it is reasonably practicable to do so; and
 - (e) the relevant party will in any event notify the Board of any such announcement made.

13 Exercise of rights

In relation to the rights of each party under this Agreement:

- (a) rights may be exercised as often as necessary;
- (b) rights are cumulative and not exclusive of any right or remedy provided by law;
- (c) rights may be released or waived as regards any party without affecting the liability of any other party; and
- (d) rights may only be waived specifically in writing (and any delay in exercising, or non-exercise of, any right will not constitute a waiver of that right).

14 Entire agreement

- 14.1 This Agreement and the Articles set out the entire agreement and understanding between the parties to such documents in connection with the subject matter of this Agreement.
- 14.2 Without affecting clause 14.1, this Agreement supersedes all, if any, prior negotiations, representations, undertakings and agreements (whether oral or written) on any matter which is the subject of this Agreement.
- 14.3 Each of the parties acknowledges that it is not relying on any statement, warranty, representation, undertaking, collateral contract or other assurance given or made by or on behalf of any of the other parties or the Company (or any of their respective agents, officers, employees and advisers) in relation to the subject matter of this Agreement which is not expressly set out in this Agreement (**Non-contractual Assurance**).

- 14.4 No party will have any claim or remedy in respect of any Non-contractual Assurance.
- 14.5 To the extent that any of the parties has been given any Non-contractual Assurance (including, for the avoidance of doubt, any innocent or negligent misrepresentation or misstatement), the relevant party unconditionally waives any claims, rights or remedies which it might otherwise have in relation thereto.
- 14.6 Nothing in this clause 14 or otherwise under this Agreement will exclude or limit any liability for, or remedy in respect of, fraud or fraudulent misrepresentation.

15 Alterations

- 15.1 Any alteration to this Agreement must be in writing, refer specifically to this Agreement and be duly executed by or on behalf of the Company and Members representing a Joint Special Majority Consent, provided that no such alteration shall be made which would increase the liability of a Member or which would in the opinion of counsel of at least 5 years' standing constitute unfair prejudice of a minority Member (for the purposes of the Companies Act 2006) without in each case the prior written consent of all of the Members who are so affected.
- 15.2 In the event that an alteration to this Agreement is approved by a Joint Special Majority Consent pursuant to clause 15.1 and one or more Members is of the opinion that the change constitutes unfair prejudice for the purposes of the Companies Act 2006, it shall be the responsibility of that Member or Members to instruct counsel of at least 5 years' standing, at the cost of that Member or Members, in order to obtain an opinion as to the merits and prospects of success of any such unfair prejudice allegation.

16 Review

The Board will review the terms of this Agreement and the Articles at least once every 12 months, with a view to ensuring that this Agreement and the Articles remain fit for purpose. In undertaking such review and making any recommendations to the Members, the Board shall take into account all written feedback raised from time to time by the Members (or any of them) and the Strategic Advisory Group. For the avoidance of doubt, any changes to the terms of this Agreement and the Articles arising from any such review will require the approval of the Board and Joint Special Majority Consent.

17 Severability

- 17.1 If any provision in this Agreement is or at any time becomes invalid, illegal or unenforceable in whole or in part, the relevant provision will apply with whatever modification or deletion is necessary to ensure that it is valid, legal and enforceable.
- 17.2 To the extent that it is not possible to modify or delete any provision under clause 17.1, the relevant provision (or part of it), to the extent that it is invalid, illegal or unenforceable, will not apply and will be deemed to not form part of this Agreement.
- 17.3 The validity, legality and enforceability of the remainder of this Agreement will not, subject to any modification or deletion under clause 17.1 and/or the effect of clause 17.2, be affected, provided that the operation of this clause 17 would not negate the commercial intention of the parties in entering into this Agreement.

18 Counterparts

- 18.1 This Agreement may be entered into in the form of two or more counterparts, each executed by one or more of the parties but will not be effective until all parties have executed at least one counterpart.
- 18.2 Each counterpart will be an original of this Agreement and all the counterparts taken together will constitute one instrument.

19 Continuing effect of this Agreement

- 19.1 This Agreement will cease to have effect in relation to a Member which ceases to hold any Membership Interests save in respect of:
- (a) any provision of this Agreement which is expressed to continue after such cessation; and
 - (b) any liability which at the time of such cessation has accrued to another party or which may accrue in respect of any act or omission occurring prior to such cessation.

20 Governing law and dispute resolution

- 20.1 This Agreement will be governed by and construed in accordance with Scots law.
- 20.2 All claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Agreement, its subject matter, negotiation or formation will be determined in accordance with Scots law.
- 20.3 If in any court any party argues that a court other than the courts of Scotland has jurisdiction to determine any claims or disputes (including any non-contractual claims or disputes) arising out of or in connection with this Agreement, that issue will be determined in accordance with Scots law, and any right that any person might otherwise have to rely upon the law of the forum or any other law is irrevocably and unconditionally waived.
- 20.4 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, its subject matter, negotiation or formation (whether contractual or non-contractual in nature) and any Deadlock Matter shall be referred to and finally resolved by arbitration under the rules from time to time in force of the Scottish Arbitration Centre (**SAC**) (**SAC Rules**), which SAC Rules are deemed to be incorporated by reference into this clause.
- 20.5 The number of arbitrators shall be one. The parties will seek to reach agreement on the identity of the sole arbitrator within 10 Business Days after the initiation of arbitration. If the parties do not reach agreement on the sole arbitrator, then the appointment of the sole arbitrator shall be made by the SAC, at the request of the Board.
- 20.6 The seat, or legal place, of arbitration shall be Edinburgh.
- 20.7 The language to be used in the arbitration shall be English.
- 20.8 The governing law of the arbitration agreement shall be Scots law.

21 Submission to jurisdiction

- 21.1 Without prejudice to clause 20.4, each party irrevocably submits to the exclusive jurisdiction of the Scottish courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Agreement.
- 21.2 Each party irrevocably waives any right that it may have to object on any ground to an action being brought in the Scottish courts, to claim that the action brought in the Scottish courts has been brought in an inconvenient forum, or to claim that the Scottish courts do not have jurisdiction (and the waiver contained in this clause 21.2 includes a waiver of all formal and substantive requirements of any otherwise competent jurisdiction in relation to this clause 21.2).
- 21.3 Each party undertakes not to contest in any court in any jurisdiction the enforcement in that jurisdiction of any judgment of the courts of Scotland against it on the ground that the Scottish courts did not have jurisdiction over it or that service of process (being service in accordance with clause 10 (Notices)) was invalid or ineffective or resulted in it not having due or adequate notice of the proceedings.

22 Process Agent

- 22.1 Each Member whose address for the service of notices is not in Scotland, England, Wales or Northern Ireland:
- (a) undertakes, within 10 Business Days after becoming a Member, to irrevocably appoint a process agent (each a **Process Agent**) as its agent to accept service of process in Scotland in relation to any document initiating or otherwise connected with any court proceedings arising out of or in connection with this Agreement and to notify the Board of the identity of such Process Agent;
 - (b) agrees to notify the Company in writing of any change of address of such Process Agent within 10 Business Days of the change of address; and
 - (c) if such Process Agent ceases to be able to act under this clause 22 or ceases to have an address in Scotland, irrevocably agrees to appoint a replacement process agent (**New Process Agent**) reasonably acceptable to the Board and after such appointment reference to the Process Agent in this clause will be read as reference to the New Process Agent and to give to the Board notice of such appointment within 10 Business Days.
- 22.2 Any such document will be validly served on each Member whose address for the service of notices is not in Scotland, England, Wales or Northern Ireland by being sent by prepaid first class post to or delivered to the Process Agent notified by them pursuant to clause 22.1 or left at the relevant Process Agent's address, whether or not forwarded to or received by the Member in question.
- 22.3 Without affecting the effectiveness of service under any other method set out in clause 10 (Notices), service of such process upon the Process Agent at its address given in clause 22.1 or elsewhere within the jurisdiction of the courts of Scotland for the time being in force will constitute good service on the Member in question.

IN WITNESS WHEREOF this Agreement comprising the 7 preceding pages together with the Schedule in 7 Parts attached to and forming part of this Agreement is executed as follows:

Commercial in Confidence
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Executed as a deed by)
Circularity Scotland Limited)
on acting by) Name of Director
)
)
) Director signature
)
)
)
) Name of Director/Secretary
)
)
) Director/Secretary signature

Executed as a deed by)
[])
on acting by) Name of Director
)
)
) Director signature
)
)
)
) Name of Director/Secretary
)
)
) Director/Secretary signature

[Drafting note: a signing block for each Founding Member will be inserted when the identities of the Founding Members is confirmed. All subsequent Members will become party to this Agreement by signing a Deed of Adherence and will become parties with effect from the date of their Deed of Adherence]

Part 2

General Principles

This Part 2 of the Schedule sets out the General Principles referred to in clause 2.

The Founding Members and the Company have agreed that it is inherent within the nature of a true industry-led and operated Scheme Administrator that the Members and the Company adhere to a number of General Principles, which are essentially statements of standards of commercial behaviour. The General Principles are expressed in broad general terms and this Agreement does not set out to define the precise extent of, or the limitations on, their application. The General Principles are intended to be applied in accordance with their spirit in order to achieve their underlying purpose.

The General Principles, which may be amended from time to time by the Board with Joint Special Majority Consent, are as follows:

Over-arching General Principle

- 1 To establish a Scheme Administrator which is industry-led and operated and which achieves the collection targets as prescribed by the Regulations in the most professional and efficient manner possible, for the benefit of consumers, producers, retailers and return point operators. This is the core principle of the proposed Scheme Administrator and should flow through and underpin everything that it does.

Performance-related General Principles

- 2 The Company will embed good practice and continuous improvement in striving to deliver an efficient and effective Scheme.
- 3 The Company will strive to meet, and if possible exceed, the collection targets as prescribed by the Regulations on behalf of all Producers who have chosen to appoint the Company as their Scheme Administrator (whether or not such Producers are also Members).
- 4 The Company will seek to stimulate a circular economy for drinks containers in the Territory.

Governance-related General Principles

- 5 [REDACTED]
- 6 The Board can only choose to extend the operations of the Company, beyond the operation of the Scheme (as it is in force at the date of this Agreement) in a cost effective manner (and bona fide related activities), if it has Joint Special Majority Consent to do so.
- 7 A Strategic Advisory Group will be formed as soon as is reasonably practicable after the Company is established to ensure adequate input from a broad spectrum of stakeholders and to provide a forum for the Company to validate proposals and strategy development. The Strategic Advisory Group should include stakeholders from across the drinks industry supply chain, as invited by the Board and subject to the approval of Members acting by Joint Ordinary Majority Consent. It is envisaged that the Strategic Advisory Group will meet up to four times per year to review the operating performance of the Scheme and to provide feedback on any

strategic proposals and plans, as sought by the Board. The Board's senior independent director will attend the Strategic Advisory Group but will not chair the Strategic Advisory Group.

Finance-related General Principles

- 8 Relative to all other Members who are Producers and/or Producers represented by the Company as Scheme Administrator, there will be no commercial advantage or disadvantage either from being a Member or being a Producer represented by the Company as Scheme Administrator. Relative to all other Members who are Return Point Operators and/or Return Point Operators who contract with the Company as Scheme Administrator, there will be no commercial advantage or disadvantage either from being a Member or being a Return Point Operator contracting with the Company.
- 9 The Company is a not-for-profit organisation and no assets or profits may be distributed to Members or to the Producers which the Company represents as Scheme Administrator whilst the Scheme is ongoing.
- 10 The Company will use environmental policy and performance as a key supplier selection criteria.
- 11 All collected Containers will be owned by the Company. [REDACTED].
- 12 The Company may choose to enter into such longer term contracts as the Board considers appropriate to help stimulate the development of recycling infrastructure, provided such contracts are consistent with General Principle 1.
- 13 The Company will prioritise being a responsible employer, including by seeking to support green jobs and circular economy employment in Scotland and seeking to adopt best practice approaches wherever appropriate (for example, the adoption of the national living wage).
- 14 There will be no spending of Scheme-related funds on anything outside of the Scheme (or bona fide activities related to the Scheme) without Joint Special Majority Consent.

Operational General Principles

- 15 All Operating Agreements between the Company and the Producers which have appointed the Company as their Scheme Administrator will be on the same terms in all material respects, save for variations that are driven by bona fide points of difference (such as the types of containers placed on the market). Each Producer who is a Member and each Producer whose production volumes have been allocated (for voting purposes) to an Approved Nominee who is a Member will be required to appoint the Company as their Scheme Administrator.
- 16 The Company will be operated at all times in a spirit of fairness, openness and transparency, provided that no information will be shared that contains container numbers (or other non-public information of a strategic or commercially sensitive nature) in such a manner or to such a level of detail as would breach applicable data protection, competition and/or confidentiality laws.
- 17 [REDACTED].
- 18 As the Scheme is an extended producer responsibility scheme, the Company will wherever reasonably practicable and properly determinable, use appropriate methodologies to ensure that there is fair and transparent cost allocation by material and there is no cross-subsidy.

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- 19 No information should be disseminated to, or shared amongst, Members, Producers and/or Return Point Operators by the Company or the Board which puts the Members, Producers or Return Point Operators in breach of applicable data protection, competition and/or confidentiality laws. It is important to avoid both actual and perceived breaches of data protection, competition and confidentiality laws and Members, Producers, Return Point Operators, the Company and the Board should each take all reasonable steps to ensure that neither the Scheme nor the Company are operated in a way which results in breaches of data protection, competition and/or confidentiality laws.
- 20 In relation to fraud prevention:
- 20.1 All parties to an Operating Agreement should be required to take reasonable steps to protect the integrity of the Scheme and avoid fraud.
- 20.2 The Company shall implement and maintain such fraud-prevention measures as the Board considers to be reasonable, appropriate and proportionate (to risk and amongst Producers generally) from time to time.
- 20.3 [REDACTED].
- 20.4 Where possible, the Company will attempt to apportion costs relating to fraud to the Producer(s) responsible for and/or affected by the fraudulent activity, rather than spreading such costs across the market.
- 20.5 The Board shall be required to continually monitor and evaluate changes in methods (including by the use of technology) that may be used to reduce or eliminate the risk of fraud (for example, the use of RFID and QR coding), all with a view to achieving the objectives set out in General Principles 20.1 and General Principles 1 to 4 in particular.
- 21 All Return Point contracts entered into by the Company will be the same for all Return Points in all material respects, save for variations that are driven by bona fide points of difference (such as the size of reverse vending machine, the manner of return (i.e., manual versus automated) and the volume of returns through that Return Point).
- 22 Neither the Board, the Executive Leadership Team nor any Member will determine the Return Point Handling Fees. Instead, an appropriate independent entity (who should not be the Company's auditors or the accountants appointed to act by the Board on day-to-day matters relating to the Company) will be appointed by the Board, with input from the Strategic Advisory Group and such other persons as the Board considers appropriate, to calculate the Return Point Handling Fees based on agreed and published parameters. This will be a transparent and independent process and a report will be published at least annually regarding the Return Point Handling Fees. In carrying out its task, such independent entity shall be entitled to consult such persons as the independent entity considers appropriate.

Part 3

Rules

This Part 3 of the Schedule sets out the Rules referred to in clause 2.

The Rules are in addition to the General Principles. Although most of the Rules are expressed in less general terms than the General Principles, they are not always framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter.

The Rules, which may be amended from time to time by the Board with Joint Special Majority Consent, are as follows:

1 Membership

1.1 Membership of the Company is available as follows:

- (a) subject to Rules 1.3, 1.4, 1.7 and 1.8, Producers can apply to become Members;
- (b) subject to Rules 1.5, 1.6, 1.7 and 1.8, Return Point Operators can apply to become Members; and
- (c) subject to Rules 1.7 and 1.8, Approved Nominees can apply to become Members.

For the avoidance of doubt and notwithstanding paragraphs (a) to (c) above, there shall only be one class of Member.

1.2 For the avoidance of doubt, Producers and Return Point Operators are not obliged to become Members, even if they qualify to be one. A Producer can appoint the Company to represent it as Scheme Administrator regardless of whether that Producer also becomes a Member. A Return Point Operator can enter into an Operating Agreement with the Company as Scheme Administrator in relation to the collection of materials from Return Points regardless of whether that Return Point Operator also becomes a Member.

1.3 [REDACTED].

1.4 [REDACTED].

1.5 [REDACTED]

1.6 [REDACTED]

1.7 An **Approved Nominee** is:

- (a) [REDACTED].

1.8 Where a Producer or Return Point Operator wishes to appoint an Approved Nominee, the following rules shall apply:

- (a) the Producer or Return Point Operator in question must appoint the Approved Nominee in question in relation to its entire production and/or collection and/or return point volumes and cannot split such volumes (and therefore the allocation of Producer Votes

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and/or RPO Votes) between multiple Approved Nominees and/or between the Producer or Return Point Operator in question and an Approved Nominee, PROVIDED THAT where a person is both a Producer and a Return Point Operator and therefore has a mixture of production and/or collection and/or return point volumes, it can allocate all of its production volumes to one Approved Nominee (pursuant to and in accordance with Rules 1.7(a) or (b)) and all of its collection and/or return point volumes (as applicable) to another Approved Nominee (pursuant to and in accordance with Rules 1.7(c) or (d)); and

- (b) in relation to the allocation of Producer Votes and RPO Votes, such votes will be allocated to the relevant Approved Nominees in proportion to the production and/or collection and/or return point volumes allocated to such Approved Nominees by the Producers and/or Return Point Operators in question, PROVIDED THAT the Board shall be entitled to take such action as it considers appropriate from time to time to ensure that all volumes so allocated are not double counted or over-stated.

- 1.9 There will be no joining fees or annual membership fees charged in relation to Membership of the Company, unless and to the extent implemented from time to time by the Board, with Joint Ordinary Majority Consent.
- 1.10 Applications for Membership, withdrawal of Membership and expulsion from Membership will all be dealt with by the Board in accordance with the provisions of this Agreement and the Articles.
- 1.11 Subject to Rules 1.1 to 1.8 above, any Producer, Return Point Operator or Approved Nominee will be entitled to apply for Membership, in each case by notice in writing to the Board, c/o the Company Secretary, at any time and from time to time. Any validly submitted application for Membership must be processed by the Board within 20 Business Days after receipt. Where a bona fide Producer, Return Point Operator or Trade Association qualifies for Membership on the basis of the Rules set out in this Agreement, the Board cannot refuse to admit them to Membership.
- 1.12 Any Member will be entitled to withdraw from Membership at any time, in each case by giving at least 30 days' prior written notice to the Board, c/o the Company Secretary.
- 1.13 Expulsion from Membership will be at the discretion of the Board and will be limited to circumstances in which the Member in question (or the underlying Producer or Return Point Operator in question where they are a Member via an Approved Nominee):
 - (a) is in material breach of the terms of this Agreement, the Articles or their Operating Agreement with the Company; and
 - (b) such material breach is either incapable of being remedied or, if capable of being remedied, has not been remedied by the Member, Producer or Return Point Operator in question within 30 days after that Member, Producer or Return Point Operator receives notice in writing from or on behalf of the Board of the material breach in question and the action(s) required to remedy it; and
 - (c) in the opinion of the Board, acting reasonably and in good faith, it is untenable for the Member, Producer or Return Point Operator in question to continue to be a Member of the Company as a result of such material breach.

The parties acknowledge and agree that expulsion is a remedy of last resort, where the material breach in question threatens to materially undermine or damage the operation or integrity of the Company as Scheme Administrator, and shall only be used in that context. Examples of actions that may be expected to result in expulsion include (i) action that is reasonably likely to result in the Company's status as a Scheme Administrator being revoked by the Scottish Ministers, or (ii) action that would bring the Company or the Member, Producer or Return Point Operator in question into disrepute, such as fraud or dishonesty. For the avoidance of doubt, in relation to a Producer, any expulsion as a Member is without prejudice to that Producer's right to continue to appoint the Company as its Scheme Administrator for the purposes of the Scheme (which will be separately dealt with by the Operating Agreement between the Company and the Producer in question).

- 1.14 For the avoidance of doubt, any resignation, withdrawal or expulsion of a Member shall be without prejudice to their rights and obligations accruing up to the date on which their Membership terminates.

2 Voting

[REDACTED]

3 General Meetings

- 3.1 General meetings may, as appropriate, be convened as meetings of the Members holding Producer Votes, meetings of the Members holding RPO Votes or meetings of all Members, all as specified in the notice convening the meeting and based on the business of the meeting in question. Each Member will use reasonable endeavours to procure that it or a duly appointed proxy or representative attends each meeting of the Members which it is eligible to attend and that a quorum is present throughout each such meeting.
- 3.2 The quorum for the transaction of business at any general meeting will be:
- (a) in relation to a meeting of Members holding Producer Votes, at least two Members representing at least 25% of the Producer Votes allocated by the Company to Members as at the date of the meeting in question;
 - (b) in relation to a meeting of Members holding RPO Votes, at least two Members representing at least 25% of the RPO Votes allocated by the Company to Members as at the date of the meeting in question; and
 - (c) in relation to a meeting of all Members, at least (1) two Members representing at least 25% of the Producer Votes allocated by the Company to Members as at the date of the meeting in question, and (2) two Members representing at least 25% of the RPO Votes allocated by the Company to Members as at the date of the meeting in question.
- 3.3 Where a meeting of Members holding Producer Votes has been convened for the purpose of seeking an Ordinary Majority Consent or a Special Majority Consent, the Members holding only RPO Votes shall be given notice of such meeting and shall be entitled to attend such meeting but shall not be entitled to speak at such meeting (unless and to the extent they are invited to do so by the chair of the meeting on a case by case basis) nor to vote at such meeting. Any Member holding only RPO Votes shall also be permitted to submit written representations to the chair of the meeting in advance of any such meeting, which written representations must be received by the Company Secretary prior to the commencement of the meeting in question. Any

such written representations so received shall be shared by the chair with the Members attending the meeting.

- 3.4 If, within half an hour from the time appointed for a general meeting, a quorum is not present, the meeting will be adjourned to the same day of the next week at the same time and place or such other place, date and time as the Members in attendance will agree (provided that if they do not agree it will be deemed to be the same day of the next week at the same time and place) and each eligible Member will be notified by the Company by notice in writing of the date, time and place of the adjourned meeting at least 2 days in advance thereof. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, those one or more eligible Members and/or eligible Members' representatives present will constitute a quorum.

4 Board, Strategic Advisory Group and Company Secretary

- 4.1 The Board structure will at all times be consistent with the General Principles. The Board will be a supervisory and governance Board comprising a mix of individuals who have the skills and experience needed to successfully further the aims and objectives of the Company in its capacity as Scheme Administrator.
- 4.2 Accordingly, no Member, Producer, Return Point Operator, Trade Association, sector or other interest group will have an entrenched appointment right and all appointments will be subject to approval by the Members acting by Joint Ordinary Majority Consent.
- 4.3 All Board members will be natural persons (i.e., human beings) and there will be no corporate directors (i.e., corporate entities acting as directors of the Company).
- 4.4 A bespoke Corporate Governance Code has been adopted by the Company and is set out in Part 5 of the Schedule. The Corporate Governance Code includes a statement as to the type of Board the Members want and the skillsets they want the Board to have, in order for it to be able to operate as a truly independent Board.
- 4.5 The Board will be recruited by reference to the requirements set out in the Corporate Governance Code.
- 4.6 Unless otherwise agreed by a Joint Ordinary Majority Consent, the Board will comprise:
- (a) An independent chairperson who is experienced at working in public sector and private sector collaborations and has a track record of "making things happen".
 - (b) A professional CEO.
 - (c) A professional Finance Director.
 - (d) 4 independent non-executive directors, appointed for their skillsets and ideally coming from outside the industry but covering between them: logistics / supply chain / operations; environment; marketing; and finance.
 - (e) 4 non-executive directors from the industry who are able to provide appropriate sector input and coverage and ideally covering: large retail / major multiples; smaller retail / convenience / wholesale; soft drinks, water and the producers of other non-alcoholic beverages; alcohol producers and hospitality.

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- 4.7 Decisions of the Board will be by a simple majority of directors. In the case of an equal number of votes being cast for and against a resolution proposed at a Board meeting, the chair shall have a casting vote.
- 4.8 Any Member, any director of the Company and any member from time to time of the Strategic Advisory Group may propose a director, either to fill a casual vacancy or as part of any scheduled review of the Board. However, all appointments will ultimately be subject to approval by the Members, acting by Joint Ordinary Majority Consent.
- 4.9 The Corporate Governance Code reiterates that the central principle is to deliver the Scheme to achieve the targets whilst keeping it as efficient as possible.
- 4.10 The non-executive members of the Board will not be entitled to any remuneration in their capacity as Directors of the Company, other than as may be agreed in writing with the Board (and subject to Joint Ordinary Majority Consent). Executive directors will be entitled to such remuneration as the Board shall determine in relation to their services as executives of the Company, subject to approval on an annual basis by the Members, acting by Joint Ordinary Majority Consent.
- 4.11 Meetings of the Board will be held on such dates and at such times and places as are agreed by the directors from time to time (but in any event not less than four times a year and otherwise as circumstances require).
- 4.12 No Board meeting will normally be convened on less than 5 Business Days' notice, but a meeting of the Board may be convened by giving not less than 48 hours' notice if the interests of the Company would be likely to be adversely affected to a material extent if the business to be transacted at such Board meeting were not dealt with as a matter of urgency or if all the Directors agree.
- 4.13 The Company will recruit a professional CEO, a qualified Finance Director and such other staff as the Board considers necessary and appropriate from time to time. The members of that Executive Leadership Team will report to the Board.
- 4.14 Subject to the General Principles and to the Rules, the Board will have all of the powers normally reserved to a truly independent corporate board and will delegate such functions as the Board considers appropriate to the Executive Leadership Team. However, neither the Board, the Executive Leadership Team nor any Member will determine the Return Point Handling Fees. Instead, an appropriate independent entity (who should not be the Company's auditors or the accountants appointed to act by the Board on day-to-day matters relating to the Company) will be appointed by the Board, with input from the Strategic Advisory Group and such other persons as the Board considers appropriate, to calculate the Return Point Handling Fees based on agreed and published parameters, methodology and frequency, **all within the over-riding framework and principles prescribed by the Regulations**. This will be a transparent and independent process and a report will be published at least annually regarding the Return Point Handling Fees. In carrying out its task, such independent entity shall be entitled to consult such persons as the independent entity considers appropriate.
- 4.15 Pursuant to General Principle 7, the Strategic Advisory Group will be formed as soon as is reasonably practicable after the Company is established to ensure adequate input from a broad spectrum of stakeholders and to provide a forum for the Company to validate proposals and strategy development. The Strategic Advisory Group should include stakeholders from across a range of sectors, including the drinks industry, waste industry, environmental industry and

consumer industry, as invited by the Board and subject to the approval of Members acting by Joint Ordinary Majority Consent. No Member, or person or entity represented for the purposes of the Company by a Member, should be a member of the Strategic Advisory Group. It is envisaged that the Strategic Advisory Group will meet up to four times per year to review the operating performance of the Scheme and to provide feedback on any strategic proposals and plans, as sought by the Board. The Board shall be obliged to consider any written recommendations of the Strategic Advisory Group and to formally respond to such recommendations in writing. The Board's senior independent director will attend the Strategic Advisory Group but will not chair the Strategic Advisory Group. The Strategic Advisory Group will also have the right to propose candidates for the Board, as set out in Rule 4.8.

- 4.16 The Company shall, pursuant to the Corporate Governance Code, at all times recruit and retain a suitably qualified company secretary of the Company (as regards suitability, using the CA 2006 rules for company secretaries of UK public companies as a guide, but without being strictly bound by those provisions of CA 2006). All company secretary appointments from time to time shall be made by the Board.

5 Business of the Company

Without prejudice to any other provision of this Agreement, the Business will, with effect from the date of this Agreement, at all times be conducted in accordance with the legal and regulatory requirements insofar as they are applicable to the Company from time to time, and the Members agree not to carry out or permit to occur anything which they know, or should reasonably have known, would be a breach of the legal and regulatory requirements affecting the Company.

6 Operational Plan and Budget

The Company will conduct its Business at all times in accordance with the Operational Plan and the Budget. The Operational Plan and each Budget will be as adopted by the Board from time to time.

7 Funding

[REDACTED].

8 Dividend policy

The Company will be not-for-profit and there will accordingly be no distribution to the Members during the lifetime of the Scheme of any surplus generated. Any surplus from time to time may, without limitation, be used to finance and further the aims of the Company.

9 Dealings with and transfers of Membership Interests

- 9.1 Each of the Members undertakes with the other Members and with the Company that, during the continuance of this Agreement, it will not:

- (a) directly mortgage (whether by way of fixed or floating charge), directly pledge or otherwise directly encumber its legal or beneficial interest in the whole or any of its Membership Interests in the Company (excluding for this purpose any debenture or floating charge or equivalent which is granted by a Member at a corporate level);

(b) enter any agreement with respect to its voting rights (save as required to enable a Trade Association or Approved Nominee properly appointed in accordance with the Rules to vote on its behalf in relation to any resolution of the Company); or

(c) agree, whether conditionally or otherwise, to do any of the foregoing,

other than, in any case, with the prior consent in writing of the Board.

9.2 Membership Interests are generally non-transferable and a Member may only transfer their Membership Interests with the prior written consent of the Board or as permitted by Rule 9.3, in each case subject to the transferee in question entering into a Deed of Adherence as a condition of the transfer.

9.3 The following shall be permitted transfers of Membership Interests and shall be registered by the Board:

(a) any Member who is a body corporate may transfer the Membership Interests held by it to a Member of the same Group (**Corporate Transferee**), provided that (i) any such Corporate Transferee enters into a Deed of Adherence as a condition of such transfer, and (ii) where Membership Interests have been so transferred (whether directly or by a series of such transfers) and subsequent to such transfer the Corporate Transferee ceases to be a Member of the same Group as the original transferring Member, the Corporate Transferee will immediately transfer all the Membership Interests held by it to the relevant Member or to another body corporate that is a Member of the same Group as the relevant Member (subject to that entity entering into a Deed of Adherence), for such consideration as they agree within 20 Business Days of the date upon which the Corporate Transferee ceased to be a Member of the same Group; or

(b) any Member may transfer the Membership Interests held by it as part of a bona fide asset sale pursuant to which the whole or substantially the whole of the business and assets of the Member in question are transferred to a bona fide buyer, provided that any such buyer enters into a Deed of Adherence as a condition of such transfer.

10 Forfeiture of Membership Interests

10.1 In this Rule 10 a **Forfeiture Event** occurs:

(a) **corporate dissolution or insolvency etc:** in relation to any Member, if that Member being a body corporate holding a Membership Interest:

(i) has a receiver, manager or administrative receiver appointed over all or any part of its undertaking or assets;

(ii) appoints or suffers the appointment of an administrator appointed in relation to it;

(iii) enters into liquidation (other than a voluntary liquidation for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); or

(iv) has any equivalent action in respect of it taken in any jurisdiction outside Scotland; or

- (b) **unauthorised attempted transfer:** in relation to any Member, if that Member attempts to deal with or dispose of any Membership Interests or any interest in it other than in accordance with this Agreement (and whether or not for value);
- (c) **ceasing to qualify for Membership:** in relation to any Member, if that Member's production and/or collection and/or return point volumes (as applicable) fall below the thresholds for Membership set out in Rules 1.1 to 1.8.

10.2 At any time after the occurrence of a Forfeiture Event, a Forfeiture Notice may be served by the Board on the Member in respect of whom a Forfeiture Event has occurred informing that Member that their Membership Interests have been forfeited and they are no longer a Member. Where the Forfeiture Event arises pursuant to Rule 10.1(c), the Member in question shall be entitled to allocate their production and/or collection and/or return point volumes (as applicable) to an Approved Nominee. If the Member's volumes recover such that it is no longer ineligible for Membership, the Member shall be entitled to reapply for Membership in accordance with Rules 1.1 to 1.8.

11 Confidentiality

11.1 In this Agreement:

Company Confidential Information means all written, electronic or oral information, documents and materials which is confidential or proprietary to the Company or relates solely and exclusively to the Business, including the terms of this Agreement;

Member Confidential Information means all written, electronic or oral information, documents and materials which is confidential or proprietary to a Member or relates solely and exclusively to the business of a Member; and

Representatives means the directors, officers, employees, agents and/or auditors of, and the professional advisers to, the party in question.

11.2 Subject to Rule 11.4, the Company shall:

- (a) keep all Member Confidential Information confidential and only use it for the purpose of performing its role as a Scheme Administrator of the Scheme;
- (b) not disclose any Member Confidential Information to a third party, other than to such of its Representatives as will of necessity acquire it as a consequence of the performance of that party's obligations under this Agreement or in the performance of the Business; and
- (c) refrain from issuing public statements or responding to public enquiries by naming any specific brand, Member, Return Point Operator, Producer or Approved Nominee, either directly or by inference, without first obtaining the approval of the relevant party or parties to whom the statement or response relates.

11.3 Subject to Rule 11.4, each Member shall:

- (a) keep all Company Confidential Information and all Member Confidential Information of the other Members confidential and only use it for the purpose of performing its obligations under the Scheme; and

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- (b) not disclose any Company Confidential Information or Member Confidential Information of the other Members to a third party, other than to such of its Representatives as will of necessity acquire it as a consequence of the performance of that party's obligations to the disclosing Member.

11.4 Rules 11.2 and 11.3 shall not apply to any Company Confidential Information or Member Confidential Information to the extent that it:

- (a) comes into the public domain other than through breach of Rules 11.2 or 11.3;
- (b) is required or requested to be divulged by any court, tribunal or governmental authority with competent jurisdiction to which the party in question is subject, wherever situated;
- (c) is required to be disclosed by law or by any relevant national or supranational regulatory authority;
- (d) is demonstrably known to the receiving party at the date of first disclosure of the information in question to the receiving party; or
- (e) is disclosed with the disclosing party's prior written approval to the disclosure.

11.5 Each party shall:

- (a) make sure that its Representatives comply with this Rule 11. If asked for, the parties shall make sure that their Representatives sign a confidentiality agreement reflecting the terms of this Rule 11; and
- (b) tell the Company Secretary (in the case of Company Confidential Information) or the Member(s) in question (in the case of Member Confidential Information) immediately if it discovers that this Rule 11 has been breached.

11.6 In the event that a party, its Representatives or anyone to whom they transmit any Company Confidential Information or Member Confidential Information, becomes (or it is reasonably likely that it or they shall become) legally compelled to disclose any such Company Confidential Information or Member Confidential Information, prompt notice of such fact (to the extent permissible) shall be given to the Company (in the case of Company Confidential Information) or Member(s) in question (in the case of Member Confidential Information) prior to any disclosure.

11.7 The obligations in this Rule 11 shall continue without limit in time.

12 New Members

12.1 Subject to the other provisions of the Articles and this Agreement, no transfer or issue of any Membership will be made unless the transferee or recipient has first executed a Deed of Adherence and the parties agree that, having executed such Deed of Adherence, the transferee or recipient (as the case may be) will be bound by and will be entitled to the benefit of the provisions of this Agreement subject to and in accordance with the terms of the relevant Deed of Adherence as if they had been named as a party to this Agreement in the capacity referred to in the Deed of Adherence.

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- 12.2 No Deed of Adherence need be executed where the transferee or recipient (as the case may be) is already a party to this Agreement (in the same capacity as that in which the transferor is a party in respect of the Membership Interests in question).
- 12.3 Each Member irrevocably and unconditionally appoints the Company as its lawful attorney for the purpose of executing a Deed of Adherence.
- 12.4 The Company will keep any executed Deed of Adherence.
- 12.5 In this Agreement, unless the context otherwise requires or the terms of any Deed of Adherence express the contrary, the expression **Member** includes any party adhering to this Agreement as a Member pursuant to a Deed of Adherence.

13 Political Donations

- 13.1 It is intended that the Company will be apolitical and accordingly no political donations may be made by the Company, unless the Members agree otherwise on a case-by-case basis and acting by Joint Ordinary Majority Consent.

Part 4

[REDACTED]

Part 5

Corporate Governance Code

This Part 5 of the Schedule sets out the Corporate Governance Code referred to in Rule 4.4.

The Code is an adaptation of the UK Financial Reporting Council's UK Corporate Governance Code (as published in July 2018) and is intended to be applied in a similar "comply or explain" manner.

The Code is intended to:

- place considerable emphasis on decision-making and outcomes;
- promote an inclusive approach to stakeholder engagement;
- encourage the Board to reflect on the way in which decisions are taken and how that might affect the quality of those decisions;
- encourage a broad focus and a willingness to listen to different voices and influences; and
- support openness and accountability in delivering the long-term sustainable success of the Company.

The Code, which may be amended from time to time by the Members (acting by Joint Special Majority Consent), is as follows:

1 – BOARD LEADERSHIP AND COMPANY PURPOSE

<i>Principles</i>	<i>Guidance</i>
<p>A. The central purpose of the Company is to act as a world-class, industry-led and operated Scheme Administrator which achieves the agreed targets of the Scheme in the most professional and efficient manner possible, for the benefit of consumers, producers, retailers and return point operators.</p>	<p><i>A company's purpose is the reason for which it exists. This is particularly important in the case of the Company, acting in its role as Scheme Administrator, and must underpin everything the Company does, always taking a long-term and sustainable view wherever possible.</i></p>
<p>B. The Board is to comprise a mix of individuals who have the skills and experience needed to further the aims and objectives of the Company, in its capacity as Scheme Administrator, in an effective and efficient manner.</p>	<p><i>An effective board sets a strategy to deliver the company's purpose, underpinned by the values and behaviours that shape its culture and the way it conducts its business. It will be able to explain the main trends and factors affecting the long-term success and future viability of the company – for example technological change or environmental impacts – and how these and the company's principal risks and uncertainties have been addressed. The Board must therefore ensure the Company's purpose, values and strategy are clearly understood and articulated</i></p>

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	<p><i>and must decide what indicators will be used to measure success.</i></p>
<p>C. All directors must act with integrity, lead by example and promote the desired culture. The Board should ensure that workforce policies and practices are consistent with the Company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.</p>	<p><i>In light of the Company's purpose, values and broad range of stakeholders, the way in which the Company operates is important and the Board must decide what indicators allow the assessment and monitoring of culture. It should be recognised that there is a high degree of public and political interest in the way in which the Company operates and that the Company's status as Scheme Administrator it awarded by the Scottish Ministers.</i></p> <p><i>A designated non-executive director should be allocated responsibility for engagement with the workforce. There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The Board should routinely review this and the reports arising from its operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.</i></p>
<p>D. The Board should ensure that the necessary resources are in place for the Company to meet its objectives and measure performance against them. The Board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.</p>	<p><i>The Board should ensure that the necessary financial and human resources are in place for the Company to meet its objectives. That should include the necessary processes, controls, assurance, enablers and governance to ensure that risks affecting the delivery of the Company's objectives are appropriately managed.</i></p> <p><i>The Board should review the performance of the Company's Executive Leadership Team on at least a quarterly basis.</i></p> <p><i>All directors must act in what they consider to be the best interests of the Company, consistent with their statutory duties.</i></p> <p><i>Whilst this Agreement sets out detailed General Principles, Rules and Member consent matters, the Board should also codify a formal schedule of matters specifically reserved for the Board's decision (as opposed to being delegated to the Executive Leadership Team).</i></p> <p><i>The Board should take action to identify and manage conflicts of interest, including those resulting from significant shareholdings, and</i></p>

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	<p><i>ensure that the influence of third parties does not compromise or override independent judgement.</i></p>
<p>E. In order for the Company to meet its responsibilities to Members and stakeholders, the Board should ensure effective engagement with, and encourage participation from, these parties.</p>	<p><i>If 20 per cent or more of votes have been cast against a Board recommendation for a resolution, the Company should explain, when announcing voting results, what actions it intends to take to consult Members in order to understand the reasons behind the result. An update on the views received from Members and actions taken should be published no later than 30 days after the meeting in question.</i></p> <p><i>The Board should understand the views of the Company's other key stakeholders and describe in the annual report how their interests have been considered in Board discussions and decision-making. The Board should keep engagement mechanisms under review so that they remain effective.</i></p>

2 – BOARD COMPOSITION, DIVISION OF RESPONSIBILITIES AND EVALUATION

<i>Principles</i>	<i>Guidance</i>
<p>A. The chair leads the Board and is responsible for its overall effectiveness in directing the Company. The chair should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive Board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information.</p>	<p><i>The chair should be independent on appointment. The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the Board, the Members should be consulted ahead of appointment and a Joint Special Majority Consent will be required.</i></p> <p><i>The chair should not remain in post beyond nine years from the date of their first appointment to the Board. To facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time, particularly in those cases where the chair was an existing non-executive director on appointment. A clear explanation should be provided.</i></p>
<p>B. The Board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the Board’s decision-making. There should be a clear division of responsibilities between the leadership of the Board and the executive leadership of the Business.</p>	<p><i>It is currently anticipated that the Board will comprise:</i></p> <ul style="list-style-type: none"> <i>(a) An independent chairperson who is experienced at working in public sector and private sector collaborations and has a track record of "making things happen".</i> <i>(b) A professional CEO.</i> <i>(c) A professional Finance Director.</i> <i>(d) 4 independent non-executive directors, appointed for their skillsets and ideally coming from outside the industry but covering between them: logistics / supply chain / operations; environment; marketing; and finance.</i> <i>(e) 4 non-executive directors from the industry who are able to provide appropriate sector input and coverage and ideally covering: large retail / major multiples; smaller retail / convenience / wholesale; soft drinks, water and the producers of other non-alcoholic beverages; alcohol producers and hospitality.</i>

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	<p><i>A reasonable proportion of the Board, excluding the chair, should be non-executive directors whom the Board considers to be independent.</i></p> <p><i>Appointments to the Board should be subject to a formal, rigorous and transparent procedure and an effective succession plan should be maintained for Board and senior management. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.</i></p> <p><i>The Board and its committees should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the Board as a whole and membership regularly refreshed.</i></p> <p><i>Annual evaluation of the Board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.</i></p> <p><i>One third of the directors should be subject to annual re-election, with each director being subject to re-election at least once every three years. The Board should set out in the papers accompanying the resolutions to elect each director the specific reasons why their contribution is, and continues to be, important to the Company's long-term sustainable success.</i></p> <p><i>Notice or contract periods should be one year or less. If it is necessary to offer longer periods to new directors recruited from outside the Company, such periods should reduce to one year or less after the initial period.</i></p>
<p>C. Non-executive directors should have sufficient time to meet their Board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.</p>	<p><i>The Board should appoint one of the independent non-executive directors to be the senior independent director, to provide a sounding board for the chair and serve as an intermediary for the other directors, Members and the Strategic Advisory Group. Led by the senior independent director, the non-executive directors should meet without the chair present at least</i></p>

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	<p><i>annually to appraise the chair's performance, and on other occasions as necessary.</i></p> <p><i>Non-executive directors have a prime role in appointing and removing executive directors. Non-executive directors should scrutinise and hold to account the performance of management and individual executive directors against agreed performance objectives. The chair should hold review meetings on at least a bi-annual basis with the non-executive directors without the executive directors present.</i></p>
D. The Company should always have a suitably qualified company secretary appointed.	<p><i>The Company Secretary should be appointed by the Board from time to time.</i></p> <p><i>In assessing whether a person is suitably qualified to act as company secretary, the Board should take into account the qualifications required by CA 2006 for a company secretary of a UK public limited company.</i></p>
E. The Board, supported by the Company Secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.	<i>The responsibilities of the chair, chief executive, senior independent director, Board and committees should be clear, set out in writing, agreed by the Board and made publicly available.</i>
F. There should be a formal and rigorous annual evaluation of the performance of the Board, its committees, the chair and individual directors.	<i>The chair should act on the results of the evaluation by recognising the strengths and addressing any weaknesses of the board. Each director should engage with the process and take appropriate action when development needs have been identified.</i>

3 – AUDIT, RISK AND INTERNAL CONTROL

<i>Principles</i>	<i>Guidance</i>
A. The Board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.	<i>The Board should establish an audit committee of independent non-executive directors, with a minimum membership of three. The chair of the Board should not be a member. The Board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole should have competence relevant to the sector in which the Company operates.</i>

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	<p><i>While all directors have a duty to act in the interests of the Company, the audit committee has a particular role, acting independently from the executive, to ensure that the interests of Members and other stakeholders are properly protected in relation to financial reporting and internal control. However, the Board has overall responsibility for an organisation's approach to risk management and internal control. Any disagreement within the Board, including disagreement between the audit committee's members and the rest of the Board, should be resolved at Board level.</i></p> <p><i>The audit committee is responsible for discharging governance responsibilities in respect of audit, risk and internal control, and will report to the Board as appropriate.</i></p> <p><i>The annual report should describe the work of the audit committee.</i></p>
<p>B. The Board should present a fair, balanced and understandable assessment of the Company's position and prospects.</p>	<p><i>The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for Members and other stakeholders to assess the Company's position, performance, business model and strategy.</i></p>
<p>C. The Board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the Company is willing to take in order to achieve its long-term strategic objectives.</p>	<p><i>The Board has ultimate responsibility for risk management and internal control, including for the determination of the nature and extent of the principal risks it is willing to take to achieve its strategic objectives and for ensuring that an appropriate culture has been embedded throughout the organisation.</i></p> <p><i>The Board should carry out a robust assessment of the Company's emerging and principal risks at least once a year. The Board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated.</i></p> <p><i>The Board should monitor the Company's risk management and internal control systems and, at least annually, carry out a review of their</i></p>

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	<p><i>effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.</i></p>
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4 – REMUNERATION

Principles	Guidance
<p>A. Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to the Company's purpose and values, and be clearly linked to the successful delivery of the Company's long-term strategy.</p>	<p><i>The Board should establish a remuneration committee of independent non-executive directors, with a minimum membership of three. The chair of the Board should not be a member. Before appointment as chair of the remuneration committee, the appointee should have served on a remuneration committee for at least 12 months.</i></p> <p><i>The design of remuneration policies, structures and schemes is a crucial part of the remuneration committee's role. Remuneration committees are expected to focus on the strategic rationale for executive pay and the links between remuneration, strategy and long-term sustainable success.</i></p> <p><i>Where performance-based incentive plans are used, the choice of performance measures is important. Using a range of financial, non-financial and strategic measures can help ensure that targets are aligned with how the company will deliver value over the long-term in line with company purpose. Metrics need to be reliable and credible to satisfy Members, and their purpose should be explained.</i></p>
<p>B. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome.</p>	<p><i>The remuneration committee should have delegated responsibility for determining the policy for executive director remuneration and setting remuneration for the chair, executive directors and senior management, subject in all cases to annual ratification by the Members (acting by Joint Ordinary Majority Consent).</i></p> <p><i>The remuneration committee should review workforce remuneration and related policies and the alignment of incentives and rewards with culture, taking these into account when setting the policy for executive director remuneration.</i></p> <p><i>There should be a description of the work of the remuneration committee in the annual report.</i></p>
<p>C. Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of</p>	<p><i>Levels of remuneration for the chair and all non-executive directors should reflect the time commitment and responsibilities of the role and be consistent with the General Principles and the</i></p>

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<p>Company and individual performance, and wider circumstances.</p>	<p><i>Rules. Remuneration (if any) for all non-executive directors should in any event not include performance-related elements.</i></p> <p><i>The remuneration committee should ensure compensation commitments in directors' terms of appointment do not reward poor performance. They should be robust in reducing compensation to reflect departing directors' obligations to mitigate loss.</i></p>
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Part 6

Deed of Adherence

This Deed is made on

◆ 20◆◆

Between

- (1) **[Person adhering]** of ◆ **(New Member)**; and
- (2) **Circularity Scotland Limited**, a private company limited by guarantee (No. SC680460) whose registered office is at [Exchange Tower, 19 Canning Street, Edinburgh, EH3 8EH] **(Company)**.

Whereas

The New Member wishes to become a Member of the Company and the Company is willing to admit the New Member as a Member of the Company, subject to the New Member entering into this Deed in favour of the Company and the persons whose names and addresses are set out in the Schedule hereto **(Continuing Parties)**.

It is agreed

- 1 The parties refer to the membership agreement made on ◆ 20◆◆ between (1) the Company, and (2) the Founding Members named therein[, as such Membership Agreement has been amended, varied, novated or supplemented prior to the date of this Deed] (a copy of which Agreement [as so amended], is attached to this Deed and has been initialled by us for identification) **(Membership Agreement)**.
- 2 Words and expressions defined in the Membership Agreement will unless the context otherwise requires bear the same meaning in this Deed. The Company is a party to this Deed on its own behalf and as attorney as contemplated by Rule 12.3 of the Membership Agreement.
- 3 By this Deed, the New Member intending to become the holder of Membership Interests in the Company undertakes, subject only to becoming registered as the holder of any such Membership Interests or otherwise solely and beneficially entitled thereto, to each Continuing Party to observe and be bound by all the provisions of the Membership Agreement (so far as the same remain subsisting and unfulfilled) in all respects as if the New Member were a party to such Membership Agreement and named in it as a Member.
- 4 Any Notice to the New Member will be sent to the following address, or such other address in Scotland, England, Wales or Northern Ireland as the New Member may notify to the other parties from time to time:

[Address]
- 5 This Deed may be entered into in the form of two or more counterparts, each executed by one or more of the parties but will not be effective until all parties have executed at least one counterpart. Each counterpart will be an original of this Deed and all the counterparts taken together will constitute one instrument.
- 6 This Deed will be governed by and construed in accordance with Scots law. All claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this

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Deed, its subject matter, negotiation or formation will be determined in accordance with Scots law. If in any court any party argues that a court other than the courts of Scotland has jurisdiction to determine any claims or disputes (including any non-contractual claims or disputes) arising out of or in connection with this Deed, that issue will be determined in accordance with Scots law, and any right that any person might otherwise have to rely upon the law of the forum or any other law is irrevocably and unconditionally waived. Each party irrevocably submits to the exclusive jurisdiction of the Scottish courts in relation to all matters (including non-contractual matters) arising out of or in connection with this Deed. Each party irrevocably waives any right that it may have to object on any ground to an action being brought in the Scottish courts, to claim that the action brought in the Scottish courts has been brought in an inconvenient forum, or to claim that the Scottish courts do not have jurisdiction (and the waiver contained in this clause 6 includes a waiver of all formal and substantive requirements of any otherwise competent jurisdiction in relation to this clause 6). Each party undertakes not to contest in any court in any jurisdiction the enforcement in that jurisdiction of any judgment of the courts of Scotland against it on the ground that the Scottish courts did not have jurisdiction over it or that service of process (being service in accordance with clause 4 above) was invalid or ineffective or resulted in it not having due or adequate notice of the proceedings.

IN WITNESS WHEREOF this Deed comprising this and the preceding page together with the Schedule attached to and forming part of this Deed is executed as follows:

Executed as a deed by)
Circularity Scotland Limited)
on acting by) Name of Director
)
)
) Director signature
)
)
)
) Name of Director/Secretary
)
)
) Director/Secretary signature

Executed as a deed by)
[New Member])
on acting by) Name of Director
)
)
) Director signature
)
)
)
) Name of Director/Secretary
)
)
) Director/Secretary signature

Schedule to the Deed of Adherence

The Continuing Parties (other than the Company)

Name	Address

Part 7

Interpretation and definitions

1 General

1.1 In this Agreement, unless the context otherwise requires:

- (a) references to **clauses** and **Schedules** are to clauses of, and Schedules to, this Agreement respectively;
- (b) a reference in a Schedule or part of a Schedule to **paragraphs** are to paragraphs of the Schedule or part of a Schedule in which the reference appears (acknowledging that in Part 2 of the Schedule (General Principles) each of the numbered paragraphs is referred to as a General Principle of that number and in Part 3 of the Schedule (Rules) each of the numbered paragraphs is referred to as a Rule of that number);
- (c) references to **this Agreement** include its recitals and Schedules;
- (d) references to **this Agreement** or **any other document** are to this Agreement or that document as amended from time to time;
- (e) references to **writing** include any method of reproducing words in a legible and non-transitory form, including fax, but exclude any other electronic form (as defined in section 1168 of the CA 2006);
- (f) references to **times** of the day are to Edinburgh time;
- (g) references to one **gender** include all genders;
- (h) references to the **singular** include the **plural** and *vice versa*;
- (i) references to a **person** include any individual, firm, company, government, state, state agency, partnership, association or other body (with or without separate legal personality);
- (j) references to a **company** include any company, corporation or body corporate, wherever incorporated or established;
- (k) references to **accounts** include the relevant profit and loss account and balance sheet, all notes to the accounts, the directors' and auditors' reports, cashflow statement and any other documents required to be sent to members for the relevant accounting reference period;
- (l) the expressions **holding company**, **parent undertaking**, **subsidiary**, **subsidiary undertaking** and **wholly-owned subsidiary** will have the meanings given to them in the CA 2006 (in each case ignoring any security existing over shares in the relevant undertaking);
- (m) the word **will** shall be deemed to impose obligations in the same way as if the word **shall** had been used in its place;

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- (n) the words **other, includes, including, in particular** and words of similar effect will not limit any general words which precede them and any words which follow them will not be limited in scope to the same class as the preceding words;
- (o) a person will be deemed to be **connected** with another person if the person is connected with such other person within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010; and
- (p) references to a **party** will include its successors in title and permitted assigns.

1.2 Statutory references

In this Agreement, unless the context otherwise requires, a reference to a statute or statutory provision includes:

- (a) a reference to any subordinate legislation made under that statute or statutory provision;
- (b) any past statute or statutory provision which that statute or statutory provision has replaced (directly or indirectly and whether with or without modification); and
- (c) that statute or statutory provision as from time to time amended, modified, consolidated or re-enacted (whether before or after the date of this Agreement),

save to the extent that any amendment, modification, consolidation or re-enactment made after the date of this Agreement would increase or alter the liability of any party under this Agreement.

1.3 Discretion

In this Agreement, where the consent or approval of any party is required or any party has a discretion which it may exercise in respect of any matter, the party whose consent or approval is required to be obtained or who may exercise any such discretion shall have an unfettered right to take such decision as it thinks fit regarding whether to grant any consent or approval so requested or the exercise of any such discretion, free of any implied duty not to unreasonably withhold the same or not to act arbitrarily, capriciously or irrationally, save when this Agreement expressly states to the contrary.

1.4 Overseas legal terms and references to statutes or statutory provisions

- (a) A reference to any **Scottish legal term** will, for any jurisdiction other than Scotland, include a reference to the term or concept which most nearly corresponds to it in that jurisdiction.
- (b) A reference to any **Scottish statute or statutory provision** will, for any jurisdiction other than Scotland, include a reference to the statute or statutory provision which most nearly corresponds to it in that jurisdiction.

1.5 Headings

The headings and contents table in this Agreement are for convenience only and do not affect its interpretation.

1.6 **Conflicting provisions**

If there is a conflict or inconsistency between any clause and any Schedule, the Schedule prevails. For this purpose, an omission (whether deliberate or inadvertent) is not, by itself, to be construed as giving rise to a conflict or inconsistency. In the event of any conflict, ambiguity or discrepancy between any part of the Schedule, the provisions of Part 2 of the Schedule (General Principles) shall take precedence over the provisions of Part 3 of the Schedule (Rules) and the Members will consider what changes are required to the provisions of Part 3 of the Schedule (Rules) to address the conflict, ambiguity or discrepancy in question.

2 **Definitions**

In this Agreement unless the context otherwise requires the following expressions have the following meanings:

Agreed Costs means any reasonable and properly incurred costs relating to the Company or the Business that have been incurred by a Founding Member or any other party and that the Board agrees should be reimbursed by the Company

Approved Nominee has the meaning attributed to it in Rule 1.7 (as set out in Part 3 of the Schedule)

Articles means the articles of association of the Company as adopted on or around the date of this Agreement and as amended from time to time by the Members (acting by Joint Special Majority Consent)

Board means the board of directors of the Company for the time being

Budget means each annual budget of the Company, as adopted by the Board from time to time in accordance with the terms of this Agreement

Business means the business of applying to act as Scheme Administrator and then acting as Scheme Administrator in relation to the Scheme

Business Day means any day on which banks are open for business in Edinburgh and London (excluding Saturdays, Sundays and public holidays)

CA 2006 means the Companies Act 2006

Company Confidential Information has the meaning set out in Rule 11.1

Company Secretary means the company secretary of the Company, as appointed from time to time by the Board in accordance with the provisions of the Corporate Governance Code and Rule 4.16

Containers means all containers covered by the Scheme (referred to as "scheme articles" in the Regulations)

Corporate Governance Code means the bespoke governance code adopted by the Company and set out in Part 5 of the Schedule, as amended from time to time by the Members (acting by Joint Special Majority Consent)

Deadlock Matter means any Joint Special Consent Majority matter or Joint Ordinary Consent Majority matter that is either (1) approved by the requisite majority of Members holding Producer Votes but is not approved by the requisite majority of Members holding RPO Votes, or (2) approved by the requisite majority of Members holding RPO Votes but is not approved by the requisite majority of Members holding Producer Votes, resulting in either case in a deadlock between the Members holding Producer Votes and the Members holding RPO Votes

Deed of Adherence means a deed in the form set out in Part 6 of the Schedule (Deed of Adherence) (or as varied by the Board with Joint Special Majority Consent)

Director means a director of the Company and **Directors** will be construed accordingly

Executive Leadership Team means the executive team appointed by the Company from time to time to lead the day-to-day operations of the Company, comprising a CEO, Finance Director and such other management team members as the Board considers appropriate from time to time

Financial Year means a financial year of the Company, commencing on 1 January and ending on 31 December each year, or on such other dates as the Company may resolve in accordance with the Articles, provided that, for the purposes of this Agreement, the first financial year of the Company will be deemed to have commenced on the date of this Agreement and ended on 31 December 2021

Forfeiture Event means each of the events set out in Rule 10.1

Forfeiture Notice means a notice of a Forfeiture Event and the consequences thereof, as referred to in Rule 10

Founding Member means each Member who is named in Part 1 of the Schedule

General Principle means each of the General Principles set out in Part 2 of the Schedule (with each General Principle being identified by its paragraph number in Part 2 of the Schedule)

General Principles has the meaning attributed to it in clause 2 and Part 2 of the Schedule

Group means the Company and any company which is a subsidiary or subsidiary undertaking of the Company and **member of the Group** and **Group Company** will be construed accordingly

Intellectual Property Rights means copyright, patents, rights in confidential information, know-how, trade secrets, trade marks, trade names, design right, get-up, database rights, chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future; and
- (e) wherever existing

Joint Ordinary Majority Consent means either:

- (a) the consent in writing of (a) Members holding (whether directly or through nominees or otherwise) more than 50% of the Producer Votes that have then been allocated by the Company, and (b) Members holding (whether directly or through nominees or otherwise) more than 50% of the RPO Votes that have then been allocated by the Company; or
- (b) approval at a general meeting of the Company by (a) Members holding (whether directly or through nominees or otherwise) more than 50% of the Producer Votes that have then been allocated by the Company, and (b) Members holding (whether directly or through nominees or otherwise) more than 50% of the RPO Votes that have then been allocated by the Company,

in each case by reference to the voting rights allocated at that time to the Members in accordance with the provisions of this Agreement

Joint Special Majority Consent means either:

- (a) the consent in writing of (a) Members holding (whether directly or through nominees or otherwise) at least 75% of the Producer Votes that have then been allocated by the Company, and (b) Members holding (whether directly or through nominees or otherwise) at least 75% of the RPO Votes that have then been allocated by the Company; or
- (b) approval at a general meeting of the Company by (a) Members holding (whether directly or through nominees or otherwise) at least 75% of the Producer Votes that have then been allocated by the Company, and (b) Members holding (whether directly or through nominees or otherwise) at least 75% of the RPO Votes that have then been allocated by the Company,

in each case by reference to the voting rights allocated at that time to the Members in accordance with the provisions of this Agreement

Member of the same Group means any subsidiary or holding company of the Member in question, or a subsidiary of such a holding company

Member Confidential Information has the meaning set out in Rule 11.1

Members means, together, all persons who have been admitted as members of the Company from time to time pursuant to and in accordance with Rules 1.1 to 1.8 (and includes, for the avoidance of doubt, the Founding Members for so long as they are Members of the Company and each person who becomes a Member by signing a Deed of Adherence), and **Member** means each of them

Membership means membership of the Company by virtue of being a Member

Membership Interests means each Member's interest in the Company, in its capacity as a Member and including in particular its voting rights

New Process Agent has the meaning given in clause 22

Operating Agreement means either:

- (a) an operating agreement between a Producer and the Company pursuant to which that Producer appoints the Company as its Scheme Administrator for the purposes of the Scheme; or
- (b) an operating agreement between a Return Point Operator and the Scheme Administrator regarding, inter alia, the collection of Containers from a Return Point

as the context requires

Operational Plan means the operational plan of the Company as at the date of this Agreement and as may be amended or replaced from time to time by the Board, in accordance with the terms of this Agreement

Ordinary Majority Consent means either:

- (a) the consent in writing of Members holding (whether directly or through nominees or otherwise) more than 50% of the Producer Votes that have then been allocated by the Company, or
- (b) approval at a general meeting of the Company by Members holding (whether directly or through nominees or otherwise) more than 50% of the Producer Votes that have then been allocated by the Company,

in each case by reference to the Producer Votes allocated at that time to the Members in accordance with the provisions of this Agreement

parties means the parties to this Agreement

Process Agent has the meaning attributed to it in clause 22

Producer has the meaning attributed to it in the Regulations

Producer Votes means, together, the 100,000 votes allocated by the Company as "Producer Votes" pursuant to and in accordance with Rules 2.1(b), 2.2 and 2.4 to Members who are Producers or who are Approved Nominees of Producers and who qualify for and are accepted for Membership pursuant to and in accordance with Rules 1.3, 1.4, 1.7 and 1.8

Regulations means The Deposit and Return Scheme for Scotland Regulations 2020, adopted in 2020 to implement the Scheme, as such regulations may be amended or superseded from time to time

Return Point has the meaning attributed to it in the Regulations

Return Point Handling Fees means the "reasonable handling fees" as referred to in paragraph 11(4) of the Regulations and **Return Point Handling Fee** shall be construed accordingly

Return Point Operator has the meaning attributed to it in the Regulations

Return Service means any service pursuant to which a Return Point Operator accepts an item of scheme packaging returned to a Return Point, all for the purposes of the Scheme

RPO Votes means, together, the 100,000 votes allocated by the Company as "RPO Votes" pursuant to and in accordance with Rules 2.1(c), 2.3 and 2.4 to Members who are Return Point Operators or who are Approved Nominees of Return Point Operators and who qualify for and are accepted for Membership pursuant to and in accordance with Rules 1.5, 1.6, 1.7 and 1.8

Rule means each of the Rules set out in Part 3 of the Schedule (with each Rule being identified by its paragraph number in Part 3 of the Schedule)

Rules has the meaning attributed to it in clause 2 and Part 3 of the Schedule

SAC Rules has the meaning attributed to it in clause 20.4

Scheme means the Deposit Return Scheme for Scotland, as implemented by the Regulations

Scheme Administrator has the meaning attributed to it in the Regulations

Special Majority Consent means either:

- (a) the consent in writing of Members holding (whether directly or through nominees or otherwise) at least 75% of the Producer Votes that have then been allocated by the Company, or
- (b) approval at a general meeting of the Company by Members holding (whether directly or through nominees or otherwise) at least 75% of the Producer Votes that have then been allocated by the Company,

in each case by reference to the Producer Votes allocated at that time to the Members in accordance with the provisions of this Agreement

Strategic Advisory Group means the strategic advisory group of the Company for the time being, as constituted pursuant to General Principle 7 and Rule 4.15

Territory means the territory covered by the Scheme

Trade Association means a bona fide trade association that is open for membership by all participants in the sector which the trade association in question represents, and **Trade Associations** shall be construed accordingly

Winding Up means the passing of any resolution for the winding up of the Company



Deposit Return Scheme for Scotland

Scheme Administrator Application

Version 1 (Final) 3 March 2021

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1. Introduction

This document is an application to seek approval to operate as a scheme administrator under The Deposit and Return Scheme for Scotland Regulations 2020, regulation 14, and is based on the Application Form and Operational Plan Template published by the Scottish Government in June 2020.

It is submitted by Circularity Scotland Limited (CSL), a recently founded company limited by guarantee, with twenty-seven founder members drawn from the largest drinks producers and retailers in the UK. They are all committed to making DRS a success in Scotland, and will put in place the necessary resources and people to ensure CSL delivers a compliant and comprehensive Scheme Administrator function that will enable the government's policy objectives to be achieved.

This application and the methodology described within are based on the assumption that only one Scheme Administrator (SA) is approved. In the event that a second SA is approved, Circularity Scotland (CSL) will review its operational plans and determine if and how it could operate collaboratively with another SA. At such point CSL will advise the Scottish Government of any material amendments to its previously submitted application.

2. Contact Details

Scheme Administrator Registration Details

2.1 Name: CIRCULARITY SCOTLAND LIMITED

2.2 Registered Address & Telephone Number:

Exchange Tower
19 Canning Street
Edinburgh
EH3 8EH

+44 (0)131 228 2400
+44 (0)7711 289764

2.3 Correspondence Address:

Exchange Tower
19 Canning Street
Edinburgh
EH3 8EH

2.4 Registered Number: SC680460

2.5 VAT Registration Number:

2.6 Contact Details

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Name: [Redacted]
Title: [Redacted]
Address: Exchange Tower
19 Canning Street
Edinburgh
EH3 8EH

Phone Number: [Redacted]
Email: [Redacted]

Notifications preference [Email or post]: Email

Declaration

I declare that all the information provided in this application form is accurate and complete at the time of completion.

I commit to notify SEPA and Scottish Ministers of material change in circumstances or in information provided in this form

Print Name: [Redacted]

Date: 3 March 2021

Signed: [Redacted]
Job Title: [Redacted]

3. Founding Documents

Circularity Scotland is a not-for-profit Company Limited by Guarantee with members drawn from the producer community (based on sales volumes) and the retailer community (based on collection volume and numbers of return points). Members will elect a Board comprising of an independent chair, sector-specific independent non-executive directors, and other independent non-executive directors drawn from finance, marketing and other related areas. In turn the board will appoint an executive team comprising Chief Executive, Finance Director (both of whom will also sit on the board) and other resources (in steady state the headcount will be 35-40 people).

At the date of application there are 27 members, and more are expected to join over the coming months. Their signature of the membership Agreement (or Deed of Adherence for members joining later) commits them to the general principles and rules that will define what CSL does and how it delivers. The overarching general principle is:

- To establish a Scheme Administrator which is industry-led and operated and which achieves the collection targets as prescribed by the Regulations in the most professional and efficient manner possible, for the benefit of consumers, producers, retailers and return point operators.

This is supported by a series of principles covering:

- Performance (including the stimulation of a circular economy in Scotland)
- Governance
- Finance
- Operations

The full Membership Agreement and Articles of Association for CSL are in the sections below.

3.1 Articles of Association

Attached at Appendix 1

3.2 Membership Agreement

Attached at Appendix 2

3.3 Terms of Reference for Chair, Chief Executive & Senior Independent Director

Attached at Appendix 3

3.4 List of Members

Circularity Scotland Limited is a company limited by guarantee. A list of members, as at the date of this application is shown below.

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A.G. Barr p.l.c.
AB InBev UK Limited
Accolade Wines Limited
Aldi Stores Limited
Asahi UK Ltd
Association of Convenience Stores
British Soft Drinks Association Limited
Britvic Soft Drinks Limited
Coca-Cola European Partners Great Britain Limited
Co-operative Group Limited
Danone Waters UK & Ireland
Heineken UK Limited
Highland Spring Ltd
Lidl Great Britain Limited
Lucozade Ribena Suntory Ltd
Marks and Spencer plc
National Federation of Retail Newsagents
Nestlé Waters UK
Refresco Beverages UK Limited
Sainsbury's Supermarkets Limited
Scottish Grocers' Federation
Scottish Wholesale Association
Tennent Caledonian Breweries UK Limited
Tesco Stores Limited
The British Beer and Pub Association
The Wine and Spirit Trade Association
Wm Morrison Supermarkets PLC

4. Producer Agreement

The Producer Agreement is the contract that will be established between CSL and each of the producer organisations who choose to appoint it to fulfil their obligations under the DRS regulations. It formalises the obligations that producers will place on CSL to meet that requirement, and in turn lays out the obligations CSL will place on the producer to enable the requirement to be met. It also defines the various operational aspects of the interface between the two organisations that will facilitate an efficient and effective delivery by CSL.

The current version of the Producer Agreement is attached at Appendix 4.

In preparing the detailed agreement CSL sought to ensure full compliance with all prevailing legislation relating to the scheme and acting as a Scheme Administrator on behalf of the producers it represents.

Each producer will be charged a producer fee for each item made available for sale in Scotland. The producer fee is calculated annually based on forecasted sales and return rates and is designed to recover the operating costs of CSL. The producer fee will be offset by the value of the waste material it is able to sell for reprocessing. In future years the producer fee will be further reduced by surplus cash held in the deposits fund relating to those deposits which will not be redeemed (i.e. containers determined to have been returned or destroyed outside of the deposit return system). A full description of the producer fee calculation methodology forms Policy Paper 2 of the Producer Agreement attached to this application.

[Redacted]

Products available for retail sale outside Scotland and bearing a common product code will be subject to incremental charges to reflect the increased risk of fraudulent return for deposit redemption.

CSL will account for all deposits in line with advice from its external legal advisers and auditors and in such a manner to ensure its obligations relating to outstanding deposit liabilities can be met. A number of methods for the release of unredeemed deposits have been identified e.g. offset, use of an observatory period etc. A final decision on this will not be taken until CSL's financial team, legal team and auditors are appointed and have given full consideration to this.

The fees will be reviewed annually, or by exception, at the discretion of CSL Board, should actual sales, returns or costs fall outside of agreed parameters relative to the values used in the annual calculation. In such circumstances due notice will be given.

Producers are required to register in line with the timescales laid down in prevailing applicable legislation and allowing CSL a further 10 working days to process and forward registration details to SEPA or any other regulatory body requiring such information, and to conduct a range of due diligence and credit checks.

Producers must register all SKUs to be included in the Scheme for sale in Scotland. The registration will include the GTIN/UPC/EAN code as appropriate for the product, date of introduction to the market, scheme marking, packaging details (material, capacity, size, dimensions etc.) and estimated annual sales. The producer will declare whether the SKU is to be used exclusively in Scotland or on a wider basis. Samples of the packaging will be provided to CSL in advance of release to the market to

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ensure that automated handling equipment can successfully process the packaging. Indications from other DRS systems operating elsewhere indicate a typical period of 6 weeks for this process. Recognising that this process may relate to the launch of new products or innovative packaging CSL and its agents will ensure this is a secure process.

Producers may add, delist and amend product details online in accordance with prescribed obligations and rules relating to timing. All amendments will result in a workflow alert to a member of the CSL Customer Services team for verification and acceptance. Systems will allow CSL to update all records whilst maintaining the capability to process legitimate redemptions. Any issues with an amendment will result in a prescribed escalation procedure being initiated.

All applications and amendments requiring an update to SEPA records will form part of the workflow process which will generate alerts and automatic escalation should the SEPA update not be initiated within the prescribed timescale.

CSL requires the producer to furnish it with a complete summary of its issues onto the market each month. Such submission will include all issues that may give rise to the redemption of a deposit whether the issue arises from a sale or provided free of charge for whatever reason.

CSL will maintain a record of cumulative issues and redemptions by SKU and [Redacted] CSL will review each occurrence as part of its fraud investigation process.

CSL requires the producer to furnish it with an annual auditor's report confirming the accuracy of the information reported. If sufficient grounds exist CSL may require an independent audit of the producer's reported information at any time.

Should a producer terminate their agreement with CSL they will provide an agreed period of notice. During this time the producer will be expected to transition its products to new EAN codes and make alternative arrangements for the collection of scheme material. The producer will declare sales to CSL up to the final date and pay the associated producer fees and deposits. At this point CSL will determine the average return rate for each SKU and CSL's liability will be limited to a maximum return rate which will be defined in the contract. On reaching that level the EAN will be removed from CSL's list of valid EAN codes for redemption.

Similar arrangements will apply where the contract of a producer is terminated by CSL.

The producer agreement will be extended to describe the range of remedies and penalties open to each party in the event of failure to deliver the required services and data. For serious breaches of contract, and for convictions associated with fraud, CSL will be able to terminate the producer's contract.

Other remaining work includes the agreement of some of the key parameters within the contract (e.g., the levels of incremental charge relating to the use of UK wide SKUs, the exact timing of data provision, deposit and producer fee payments etc.). These will be modelled, proposed and agreed over the next few months ensuring completion before requiring to sign up producers to the SA.

5. Producer Registration

The contract between CSL and the producer mandates that CSL will fulfil the producers' obligations with regard to registering and reporting all producer and product details to SEPA and that it will maintain all records for the prescribed length of time.

CSL will provide facilities for details to be submitted online (direct or via electronic interface), via post or fax. Direct contact via phone for the input of any producer or product information will only be allowed in emergency situations thus eliminating a potential source of error. On submission CSL's systems will ensure data integrity reporting back anomalies to the originator and CSL's Customer Service Team or Data Manager as appropriate. Once the application details pass validation by CSL its system will generate an extract file with the relevant data to be interfaced, real time, with the regulator SEPA (recognising that discussions with SEPA will be required to agree the exact nature of this interface).

Once acknowledgement of successful registration is received from SEPA the producer record will be updated and the applicant advised of the acceptance (or rejection). At this point the producers' subsystem within CSL's system, enabling enquiry and update functionality, will become available to the producer. Product updates must be completed and provisionally registered with CSL an agreed period before issue where existing container types are used and within a longer period where a new container type is proposed.

CSL will maintain the following for each producer for a period of four years:

- The number of articles placed onto the market, together with the primary packaging material used.
- The number of items of scheme packaging returned from wholesalers and retailers.
- The number of items of scheme packaging collected from return points.

6. Annual Operational Plan

A detailed operational plan is provided in the sections below.

This plan sets out the methods by which CSL will provide the services on behalf of the producers it represents. It details the standards relating to the physical handling of scheme packaging and the associated financial transactions. It further details how it will determine the handling fee for return point operators and distance retailers.

In all its operations CSL will seek to operate at the lowest cost / most environmentally friendly manner through the use of existing resources and best practice.

6.1 Scheme Articles Volumes

The scheme financials and operational modelling and design is based on the set of container data presented in the addendum to FBC1, and shown below:

Scheme Articles placed on the market by represented producers (for the previous calendar year)	
Total number of Scheme Articles, where the primary material is PET	766,088,825
Total number of Scheme Articles, where the primary material is Glass	559,586,695
Total number of Scheme Articles, where the primary material is Aluminium	845,952,852
Total number of Scheme Articles, where the primary material is Steel	8,459,529 (<i>this is 1% of the aluminium figures and is included in the Al total</i>)

Given the dramatic changes in consumer buying behaviour over the last year, because of the Covid19 pandemic, no producer is able to provide a realistic estimate of future consumption trends. For that reason the 0.25% annual growth assumed in FBC1 has been removed, until better data is available from the market.

6.2 Data Format and Verification

[Redacted]

The return information collected from each RVM or via manual return point apps etc. will be used to validate the actual returns made by each return point. Each physical receptacle / sack of returned articles will be allocated a unique bar code (or possibly RFID tag) to track its return for reprocessing and enable this validation. [Redacted].

It is proposed that the submission of all data to SEPA will be in the form of an interface file using prescribed formats agreed with SEPA.

7. Infrastructure & Logistics

7.1 Logistics Infrastructure

CSL have initiated a procurement process that will identify a small number of preferred corporate partners who will supply all logistics, counting and sorting services. In order to minimise both the environmental impact of additional driven miles and the cost of the collection service from return points, CSL will use existing vehicles and crews driving existing delivery routes to collect scheme material wherever possible.

[Redacted].

7.2 Collection Frequency

Collection activity, transport and counting centres will operate seven days per week. [Redacted]. This will be fine-tuned during conversations with return point operators as they provide the following information:

- Anticipated throughput
- Phasing (within week and within year)
- Glass handling preference
- Back haul preference
- Site restrictions (storage of scheme material and collection access)

The service level agreement will be formalised as part of the return point registration process. At this stage, it is assumed that most collections will be planned as a bus route service (defined day and time window), but dynamic planning may be more efficient in urban areas. There will always be the opportunity to request an ad hoc or emergency collection within a defined period

7.3 Scheme Material Collection Format

From manual return points, whole co-mingled plastic and metal containers will be stored and collected in a one use plastic sack, the dimensions of which shall be defined by CSL (likely to be 1500mm*450mm*450mm). Whole glass will be stored and collected in reusable plastic tote boxes provided by CSL or their nominated logistics partner (likely dimensions 600mm* 400mm* 320mm).

From automatic return points, crushed and spiked co-mingled plastic and metal containers will be stored and collected in the same type of plastic sack used for manual return points. The storage and collection of glass from both automatic return points and large hospitality sites has yet to be confirmed with the return point operators.

It is currently assumed that high throughput locations will allow glass to either be naturally broken or passed through rollers, and be stored and collected in bulk carriers. Lower throughput locations will allow glass to be naturally broken, for storage and collection in the same reusable plastic tote boxes used by manual return points.

In all cases, from both manual and automatic return points, sacks and tote boxes will be securely fastened and identified by a unique label or RFID tag. The label or RFID tag will be scanned by the collection driver on pick up from the return point. At this stage, the take back service for online shopping has yet to be defined by the relevant return point operators.

7.4 Service Standards & Complaint Process

CSL will agree and document an appropriate suite of service standards with all external customers and stakeholders, including consumers, return point operators and producers. Performance against these standards will be published on a monthly basis, alongside formal improvement plans if a minimum threshold has been breached. Key parameters will include:

[Redacted].

Service standards will be enshrined in contracts between CSL and their logistics and operational suppliers, reinforced with incentives for exceptional performance and penalties for poor performance. The penalties will include termination of the contract if the failure was of sufficient magnitude and duration.

There will be a formal complaint resolution process. A complaint can be registered via the CSL website, or in writing to the company address, or by phone to the customer call centre. Each complaint is documented, investigated and subject to a resolution process, which includes communication with the complainant.

The number, nature and resolution of complaints will be reviewed by the CSL board on a regular basis, and appropriate action taken if necessary. An annual report will be prepared by CSL and published on their website, and discussed with and reviewed by SEPA, the regulator. It is also planned to commission independent surveys of customer/consumer satisfaction.

7.5 Identification Of Return Points

The original assumption by ZWS of approximately 17400 return points appears to be underestimated. Work carried out by CSL and their modelling team suggests that the actual number of return points will be significantly greater. The work by ZWS did not account for locations where the sale of food and drink was not their primary activity. Some examples include:

- Sports venues and clubs
- Staff canteens
- Public buildings such as schools and hospitals
- Visitor attractions
- Leisure sites such as cinemas and camp sites

Detailed analysis of two post codes (G77 and EH49) combined with some local knowledge indicates that there are double the number of return points than predicted by ZWS. The Food Hygiene Information Scheme database of Food Standard Scotland has been obtained from their website. At the end of January 2021 it detailed over 51,000 sites, and an initial analysis of these suggests at least 37,000 could be RPOs.

Not all of these sites will be classed as return points. Work is underway to identify those sites that are unlikely to deal with scheme material, and then to use the One Scotland Gazetteer, the national land, property and address dataset, to improve the geographical location accuracy of those that remain. This list will then be cross-referenced with other sources, such as trade association memberships.

ZWS operate the return point exemption process on behalf of Scottish ministers. [Redacted]. Initial discussions have taken place between ZWS and CSL concerning the communication of exempted premises in a timely manner. These combined lists will then form the basis of a PR and communications strategy.

As mentioned in the branding and communications plan we will utilise our own systems and those of partners to develop accurate and detailed geographic and demographic views of collection rates across the country, to support interventions where rates are low. One of those interventions will be to initiate the setting up of voluntary return points. We will work with appropriate local groups to provide the data and processes to support their business case, and incorporate this activity in our wider community engagement programmes.

7.6 Ad Hoc Collections

It is recognised by CSL that there will be a requirement to carry out ad hoc collections from return points. This is most likely when a manual return point with limited storage capacity experiences a surge in returns driven perhaps by a local event such as a music festival. An ad hoc collection can be requested through the return point operator app, via the CSL website or by calling the customer call centre.

7.7 Deposit Repayment Process

CSL will operate collection, transport and counting services seven days per week, and movement of scheme material through the logistics network will be planned for when a vehicle has reached load capacity, ensuring a smooth and steady flow of material. Under normal circumstances, scheme material will reach a counting centre no more than 48 hours after collection.

The trigger to repay deposits to a manual return point will occur when the containers have been processed at the counting centre. For automatic return points, it is when the sacks or totes have been scanned on arrival at the counting centre. This is then subject to a validation process. Repayment of deposits to return point operators will be within an agreed time from collection of the containers.

7.8 Container Verification

CSL will only reimburse deposits to return point operators for containers that are recognised to be included within the scheme. The EAN barcode of the container will be specified by the producer during the product registration process. A mirror process will be established for products that are to be delisted or discontinued.

The EAN barcode data will be maintained within the core operating system of CSL, which will update all relevant container identification and counting infrastructure (reverse vending machines, counting machines, return point operator app, logistics operator handhelds) in near real time. Random manual checks will be used to validate bulk glass collections from large hospitality sites.

7.9 Contingency Capacity

There will be surges of activity throughout the logistics network and counting centres, either caused by the phasing of consumer demand within the week or year or by one off events such as poor weather or machine failures. CSL will source up to date data from producers on containers planned to be issued and phasing from return point operators in order to calculate the contingency.

[Redacted].

Collection drivers and counting centre operators will be recruited on contracts that offer a degree of operational flexibility, such as annualised hours. All the teams will be resourced to cover all likely absence such as holidays, sickness and training within their normal establishment. Local staff agencies will be requested to maintain a small pool of trained operators.

[Redacted]. This provides contingency against one or more of the counting machines breaking down for a period, or a systems failure that prevents counting on all machines.

7.10 Legal And Regulatory Compliance

As part of the procurement process, prospective corporate partners and logistics providers are required to demonstrate world class performance in terms of legal and regulatory compliance, in areas including:

- Health and safety
- Traffic
- Environmental
- Employment

Failure to do so will eliminate the organisation from the process. CSL will assess the processes and procedures that each organisation has in place and the performance that they deliver. Commitment by their board and senior management is mandatory.

7.11 Contract Duration

[Redacted].

7.12 Geographical Requirements

It is the intention of CSL to provide the same level of service to return points no matter where they are located. The procurement process for logistics providers has produced a network of potential suppliers that demonstrates good geographical spread. Most of the island groups are serviced daily by one of the two main ferry groups.

Special processes may need to be considered for smaller islands that are not as well connected to the mainland. [Redacted]. Deposits will still be repaid to return point operators – current intent is to do that within an agreed period from material collection.

7.13 Accessibility

We are committed to the implementation of a scheme which is accessible to all, irrespective of age, protected characteristics or location. Although return points are operated by retailers and hospitality businesses, we will influence accessibility through the agreement that we intend to establish between CSL and each return point operator (RPO). We will also work more generally with RPOs to help with RVM siting, branding etc. that could support their own accessibility policies.

The data analysis approach described above will allow CSL to identify areas where a lack of accessibility to a return point could be affecting collection rates, and initiate appropriate interventions.

It will be for the Board of CSL to establish the Strategic Advisory Group (SAG) but the candidate membership list for this SAG will include a representative who is able to cover the issues affecting groups who may have access issues with return points.

7.14 Environmental Impact/Benefits

One of the core parameters mandated by CSL during the logistics network design process was to minimise the environmental impact of the scheme. The philosophy is to use existing vehicles, crews, delivery routes and sites wherever possible in order to reduce the number of additional miles driven in total, but especially unladen. CSL will not buy new vehicles or build new sheds.

As such, CSL are engaging with logistics providers within the procurement process that already deliver to, or drive past, the majority of return points on a daily basis. One touch logistics techniques ensure that bulking centres are only used when they deliver enhanced efficiency, partly through driving less miles.

Counting centres will be co-located with existing sorting and/or recycling sites in order to reduce transport miles, and the investment in new plant and buildings, all of which have a carbon cost. [Redacted].

Glass will be allowed to naturally break as soon as possible after counting, either at an automatic return point or at a counting centre. CSL believe this to be the optimum solution balancing operational efficiency and cost against the environmental impact of glass lost to recycling. Trials show the fraction lost to colour sorting to be lower than that assumed by ZWS.

One of the selection parameters to be used in the operations procurement process is an assessment of the environmental impact of the proposal from each potential corporate partner. Not only will this consider additional miles travelled (full and empty), but will also examine their longer term strategy, such as how can the scheme be used to influence a quicker conversion to greener vehicles.

8. Delivering Collection Targets (Communications & Marketing)

8.1 Branding and Communications Plan

A Branding and Communications is attached at Appendix 5.

9. Implementation Plan

[Redacted].

10. Financing

This section describes the financial model underpinning the operation of the scheme, the source of initial and operational funding, and demonstrates that CSL is a sustainable business entity for at least 5 years.

10.1 Financial Statements

A 5-year operating Profit and Loss statement and Balance Sheet is shown below. As the section above covering the Producer Agreement described, there are several methods of dealing with the recognition of unredeemed deposits as revenue – the statements produced here assume that there is a three year observatory period, during which unredeemed deposits are not recognised as revenue, and after which in year unredeemed deposits are seen as such. This approach is similar to that used by Deloitte in the Full Business Case, but using a reduced observatory period.

[Redacted].

Operating costs are made up of the following:

- CSL staff costs
- CSL non-staff costs (fees, office costs, IT, communications and PR)
 - Communications and PR costs after launch are estimated to be about 40% of the costs incurred pre and immediately post launch. Like all costs, the board will scrutinise these carefully and should not approve marketing spend above 15% of CSL turnover on an annual basis
- Logistics and bulking centre costs
- Counting centre and maintenance costs

[Redacted].

CSL is a not-for-profit organisation and therefore it has a target post tax profit of £0. However, CSL considers it prudent to build a financial buffer (operating reserve) to protect it against uncertainty in costs / revenues and performance against forecast. This buffer is intended to mitigate against having to impose mid-year revisions to increase the producer fee that would otherwise be necessary if actual costs / revenues become adverse to plan. The method of calculating producer fees is to set them at a level which enables achievement of a pre-determined post tax profit based on forecasted issues by pack type, forecasted return rates, forecasted material sales income and associated operational costs. This post-tax profit target, or operating reserve, is expected to be higher in early years to reflect the higher degree of uncertainty and will then be bolstered as unredeemed deposits become available to ensure full debt repayment and future investment capability. Any over or under recovery will be incorporated into subsequent years' producer fee calculations. This approach, coupled with the aligned payment and receipt schedules below, enables CSL to maintain its ongoing liquidity and financial stability in the event of variations in costs and recoveries against that forecast and modelled.

Given that CSL have undertaken to set the Retail Handling Fee (RHF) using an independent assessor these financial statements have been prepared using the RHF values determined by Deloitte in their final financial model prepared in support of their Full Business Case (FBC) work, with a provision for an increase in the level of takeback which carried no excess in the FBC (roughly three times the value of the manual RHF).

An inflation factor of 2% has been applied to operational costs and RHF. However, given the uncertainty of future markets and the market changes during the COVID pandemic period no growth has been applied to the number of scheme articles placed onto the market. The values for material recovery are those used in the original FBC above.

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In addition to the operating reserve CSL will mitigate against financial risk in two additional ways as follows:

- Measurement of return rate by EAN enables returns in excess of 100% (or any other defined trigger point) to be identified, as a means of identifying potential fraud or errors in reporting. The producer contract will layout the payment implications in such circumstances. This reconciliation and charging will be incorporated into the normal monthly charging cycle (see below).

○

[Redacted].

Policy Document 3, attached to the Producer Agreement, details the fraud measures to be undertaken by CSL; these are reproduced below.

CSL faces financial risk from the fraudulent reimbursement of deposits on containers for which it has not received the initial deposit or producer fee. This may arise for various reasons such as a result of scheme containers returned not purchased in the Scottish market (non-Scottish specific SKUs), organised fraudulent activity or under reporting of issues by producers. The impact of this could result in higher producer fees for all, and ultimately the financial failure of CSL unless measures are put in place to mitigate against this.

CSL intends to pursue all cases of fraudulent activity it detects. A general principle of the company is to ensure equality for all members and stakeholders, and the fraudulent actions of one party will not be allowed to affect the financial position of other parties.

[Redacted].

CSL will employ procedures, technological solutions (applications and possibly AI solutions) to identify abnormal trends and fraud investigators to minimise the risk of fraud against CSL and its producer / importer clients.

Fraudulent activity will be primarily identified as a result of monitoring return rates by SKU compared to declared issues and against comparator products. Without abnormal activity monitoring, CSL is likely to be responsible for financing the effects of fraudulent activity where the return rate remains below 100% (and is thus not specifically identifiable as fraud). [Redacted].

The cumulative return rate will be calculated and reconciled monthly immediately following receipt of the issues data from the producer by comparison with returns recorded to the same cut-off date. Using a cumulative return rate eliminates the variance in cycle time between issue and return. Subsequent to the charging of the producer for the excess returns the cumulative return rate will be reset to 100% to avoid double counting.

In addition to monitoring return rates at EAN level CSL will also monitor return point data to identify anomalous trends which will result in further detailed investigations into the cause.

Investigations undertaken by CSL will embrace all areas of the outbound and inbound supply chain and CSL requires that participants will assist in these investigations to identify the perpetrator. CSL will pursue any party found to be perpetrating any fraud against the scheme in order to recover its costs and losses and/or support the regulator in taking appropriate enforcement action. Certain fraudulent activities will also lead to breach of the contract between a producer and the SA.

Furthermore CSL will design its systems capability and infrastructure to enable the cost-effective adoption of solutions not currently sufficiently developed for full live operations e.g. serialisation / QR codes which will enhance its capability to eliminate fraudulent activity.

CSL takes fraud extremely seriously and will work collaboratively with the Police, the Regulator and any other legitimate body to investigate fraudulent activity. CSL reserves its right to share any data or material in its possession with any legitimate authority.

Given the potential size and importance of CSL to the sector, and environmental performance within Scotland the Board consider that it will require auditors with significant capability and integrity. It anticipates that it is likely that only one of the major international audit firms will be able to provide this. Consequently CSL will, if approved, undertake a tender process to appoint a suitable auditor.

CSL takes its legal obligations and risk profile extremely seriously. CSL will hold full business insurance covering employer's and public liability insurance, director and employee indemnity and any other significant insurable risk identified during set up or ongoing operations. It will further ensure, as a contractual obligation, that any contractor operating on its behalf carries the full appropriate insurance. Its due diligence and operational processes will ensure that it or its contractors have all the appropriate legal permits and licences to carry out the operations.

10.2 Retail Handling Fee

CSL wish to create a fair and transparent process for the calculation of Retail Handling Fees acceptable to both retailers and producers

In determining the Retail handling fee CSL aims to conform to the following principles:

- The setting of the fee paid to RPOs for the handling of scheme materials, as prescribed within the regulations, will be determined by an independent assessor to terms of reference agreed by the Board and Members.
- The RHF will be fair and equitable and recognised as such by the majority of retailers irrespective of size.
- All materials, including RVMs, can be acquired at best market rates and CSL will explore ways to ensure all retailers can access these rates.
- To ensure data protection compliance and commercial security CSL will own and maintain the security of commercially sensitive information.

The independent assessor will take into account the loss of retail space, staff time lost and cost of materials associated with processing returned containers, cost of RVMs (acquired or leased) including installation and maintenance

Once the scheme is operational in Scotland, independent work flow analysis will validate the initial assumptions empirically, and identifying best practice, develop more efficient ways of working.

[Redacted].

All materials must conform to a technical specification determined by CSL.

CSL will provide a minimum specification of requirements for RVMs but it will be the responsibility of the retailer to procure or lease the equipment.

10.3 Payment Terms and Scheme Cashflow

A 5 year cash flow statement is shown below:

[Redacted].

CSL's accounts receivable and payable timetable for producer fees and deposits, designed to maintain CSL's positive cash flow and minimise financial impact for RPOs, is contained in the Producer Agreement as follows:

- Following receipt by CSL of the monthly issues CSL will operate a tight invoicing and remittance requirement to ensure that the outgoing payments to return point operators can also be made in a timely and prompt manner.
- CSL will reconcile the returns from each retail handling point received count centres up to and including the Saturday of each week and remit the credit to the retail handling point promptly.

10.4 Corporate Governance

The Membership Agreement for CSL contains a bespoke Corporate Governance Code that has been adopted by CSL. As Rule 4.4 indicates, "The Corporate Governance Code includes a statement as to the type of Board the Members want and the skillsets they want the Board to have, in order for it to be able to operate as a truly independent Board." One principle within this code directly relevant to the mitigation of fraud and theft is:

- The Board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.

Under Audit, Risk and Internal Control the Board has further obligations to "establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the Company is willing to take in order to achieve its long-term strategic objectives."

These rules and principles are the drivers to ensure that appropriate processes, procedures and resources are in place to manage all risks that impact CSL's ability to achieve its objectives, including those associated with fraud and theft.

10.5 Management of Fraud and Theft Risks

[Redacted].

10.6 Acquisition of Funding for Implementation

[Redacted].

11. Annex – Additional Benefits

11.1 Introduction

We have provided below an indication of the additional benefits that CSL could provide to the Scottish community and economy as a result of our approach to the operation of the scheme administrator role. Many of the benefits align with the general principles of the company, and the economic and social ambitions of our members, and we will continue to identify and deliver additional benefit delivery of this nature during and after implementation.

11.2 Environmental Benefits

One of the core parameters mandated by CSL during the logistics network design process was to minimise the environmental impact of the scheme. The philosophy is to use existing vehicles, crews, delivery routes and sites wherever possible in order to reduce the number of additional miles driven in total, but especially unladen. CSL will not buy new vehicles or build new sheds.

As such, CSL are engaging with logistics providers within the procurement process that already delivery to, or drive past, the majority of return points on a daily basis. One touch logistics techniques ensure that bulking centres are only used when they deliver enhanced efficiency, partly through driving less miles.

Counting centres will be co-located with existing sorting and/or recycling sites in order to reduce transport miles, and the investment in new plant and buildings, all of which have a carbon cost. If at all possible, CSL will use the long-term sale of plastic to facilitate the building of a polymer recycling plant in Scotland, thus driving the circular economy.

Glass will be allowed to naturally break as soon as possible after counting, either at an automatic return point or at a counting centre. CSL believe this to be the optimum solution balancing operational efficiency and cost against the environmental impact of glass lost to recycling. Trials show the fraction lost to colour sorting to be lower than that assumed by ZWS.

One of the selection parameters to be used in the operations procurement process is an assessment of the environmental impact of their proposal by each potential corporate partner. Not only will this consider additional miles travelled (full and empty), but will also examine their longer term strategy, such as how can the scheme be used to influence a quicker conversion to greener vehicles.

[Redacted].

11.3 Economic

- Employment and wages – early procurement activities are underway and we have already shared with prospective partners our intent to include certain legal/compliance/employment requirements as part of the selection process. Our current workforce payroll modelling assumes no individual is paid less than the living wage and we will consider the introduction of this requirement into our partner selection process.
- [Redacted].
- We intend to transport glass in a naturally broken state. A prospective partner has conducted tests to assess the loss when colour sorting glass in this state; the results indicate a substantial economic benefit with little environmental impact. We will still allow retailers to collect glass whole if that helps manage any health and safety risks that may exist.
- The two approaches above have contributed to a reduction in the relevant area of operating costs for the scheme. There are still major sources of cost to be fully quantified (e.g., the return point handling fee) but we are hopeful that overall scheme operation costs will be less than FBC and so lead to less of an economic impact on the supply chain and on consumers.
- We are aware of the valuable contribution smaller companies make in the logistics and waste management sectors, particularly in the more rural and isolated parts of the country. At this stage of procurement we are encouraging potential partners to incorporate such smaller companies into their proposed operating model and we are keen to strengthen that requirement once we have a better understanding of the coverage they have and the contribution they can make

11.4 Social

- Charitable donations – our interface with the RVMs operated by retailers will facilitate consumer selection of returned deposit to be made to a charity
- We have started to explore how third sector organisations could be involved in delivering aspects of DRS. We have an early model for incorporation of such organisations into a

virtual distributed return point model, whereby third sector organisations support collection of scheme articles in remote or isolated parts of the country

- We will rely heavily on complex and detailed data analysis to identify areas where scheme collection needs to be improved. Given the similarities in data processing requirements for consumption trend analysis, we will consider inclusion of functionality to support third sector partners in the identification of unhealthy consumption trends, and work closely with producers to provide such insight to their own future ranging decisions and community campaigns
- Our communications plan has highlighted the intent to work with charities, public and third sector organisations to support wider public engagement with DRS and provide additional learning opportunities for school children and adults. We also intend to sponsor appropriate events and initiatives both pre-launch and as part of our ongoing contribution to environmental improvement and community development.

12. Appendices

The following appendices are issued as separate documents:

- Appendix 1 – CSL Articles of Association
- Appendix 2 – CSL Membership Agreement
- Appendix 3 – Terms of Reference for Chair, Chief Executive & Senior Independent Director
- Appendix 4 – Producer Agreement
- Appendix 5 – Branding and Communications Plan

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Cabinet Secretary for Environment, Climate Change

and Land Reform

Roseanna Cunningham MSP



T: 0300 244 4000

E: scottish.ministers@gov.scot

[Redacted]

Exchange Tower
19 Canning Street
Edinburgh
EH3 8EH

By email: [\[Redacted\]@circularityscotland.com](mailto:[Redacted]@circularityscotland.com)

24 March 2021

Dear **[Redacted]**

DEPOSIT RETURN SCHEME –SCHEME ADMINISTRATOR APPLICATION

Following receipt of the application dated 3 March 2021 (and updates and additional information provided as part of the application process), I am pleased to write to you to confirm that the Scottish Ministers, in exercise of their powers under Regulation 15 of The Deposit and Return Scheme for Scotland Regulations 2020 (“the Regulations”), have granted approval to Circularity Scotland Limited as a scheme administrator of the Deposit Return Scheme (DRS) for Scotland.

This is a significant milestone in the implementation of DRS for Scotland, not least given the constraints affecting the work of setting up a company and putting together an application during the unprecedented circumstances of the COVID-19 pandemic, and I am grateful for your efforts in reaching this point.

The approval is based on the understanding that your company’s plans will be developed and progressed according to the intentions set out in the application. You are reminded that the Regulations oblige you to notify the Scottish Ministers of any material changes in the information that you have provided in your application. This would include failure to meet certain key milestones in your establishment as an operational scheme administrator, including those set out below. There is a risk that failure to notify material changes could lead to withdrawal of approval.

[Redacted]

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Scottish Ministers, special advisers and the Permanent Secretary are St Andrew's House, Regent Road, Edinburgh



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See

www.gov.scot

We also note that the detailed schedule for you to collect scheme packaging from returnpoint operators and pay them the deposit and handling fee has still to be agreed. At this time we consider the operational plan setting out an intention to agree such schedules with retailers is sufficient but it is our expectation that once such agreements are made, a clear schedule will be provided to the Scottish Ministers and such schedule and relevant agreements will be treated as part of the operational plan for the purposes of the obligations set out in Regulation 11 of the Regulations. We would consider a failure to provide a schedule (or at least to make such agreements) by 1 October 2021 as a material change in circumstances requiring notification to the Scottish Ministers.

Further to this, failure to comply with obligations as a scheme administrator under the Regulations could lead to enforcement action from SEPA or criminal sanctions, and could create the risk of your approval being withdrawn. We suggest you obtain independent legal advice to aid you in complying with your legal obligations.

We expect that Circularity Scotland will continue to keep the DRS Programme Board informed as implementation progresses and as key milestones to delivery are reached. During our assessment of the application, some points for consideration later in implementation were identified. Provision of information relating to these points would provide reassurance that the operational plan as provided is on track, and that no material changes to that plan have occurred. At this stage we have identified the following information that would provide such reassurance:

- Progress in establishing the company, such as appointing a chair and board
- Plans for due diligence on producers before registering them with SEPA
- A more detailed business plan beyond the summary provided
- A statement of what steps you will take to comply with data protection laws.

We would also be keen to see updates on opportunities to maximise wider circular economy benefits and Fair Work practices as part of delivering the scheme. As you are aware, provision of this information and its context would not directly affect approval or withdrawal of approval of the scheme administrator, but would provide reassurance that the operational plan provided is functioning successfully and that the benefits of the scheme are being maximised. Officials are happy to discuss the possible contents and timescales for provision of these updates as relevant.

Finally, you are aware that we have recently decided to commission an independent gateway review to assess the impact of the pandemic on the go-live date of 1 July 2022 for the scheme. Officials will work with you and other key stakeholders to agree the timing for the

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review. I would wish to remind you that any decision to alter the implementation date as a result of the review would require the agreement of the Scottish Parliament.



Roseanna Cunningham

Scottish Ministers, special advisers and the Permanent Secretary are St Andrew's House, Regent Road, Edinburgh



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See

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Question(s) from application form	Additional information sought
<ul style="list-style-type: none"> How will this communications plan be delivered and what resources and expertise will be deployed? 	<ul style="list-style-type: none"> What is the maximum amount (or proportion of turnover) you are planning to spend on communications? Do you have an estimated figure you expect to spend on launch, and ongoing communications? <p>In the year preceding launch, and in the year after launch, we are assuming total spend of around [Redacted] on communications to support launch. This will cover the full range of channels, and the cost of required materials, fees, incentives, paid-for ads etc. In subsequent years we expect to spend between [Redacted] and [Redacted] per year but clearly will spend more to support performance improvement campaigns.</p> In particular, what types of communications and agency support do you think will be needed (e.g., marketing, digital, PR) <p>We will appoint the appropriate set of agencies and partners once we have finalised the detail of the campaigns we will run. The campaign to identify and contact our return points will clearly have different characteristics than the one to support launch so our selection of partner(s) will reflect that. It may be we appoint a single agency to cover all our brand, marketing, PR and digital requirements, and benefit from the consistency and cost benefits that would deliver, or bring in agencies for specific functions, sector knowledge etc. The most important selection criteria will be to ensure our agencies are totally aligned with our purpose, ethos, way of working and corporate objectives. Some of our initial thinking in this area includes:</p> <ul style="list-style-type: none"> Contact and engagement with return point operators will require a more traditional PR approach through trade and public press In the early part of implementation, when trying to contact smaller producers and return point operators (who may be relatively unaware of DRS and their obligations) we may engage with specialists or experts in those segments of the market, as well as utilising other partners (such as trade associations) to make contact and promote our messages. Digital will play a very substantial part in the consumer campaign, particularly to attract younger audiences and to benefit from propagation of our message and content. We hope to have access to the digital panels on RVM during the launch campaign, and will also explore access to digital marketing/messaging capabilities of partners and organisations with complementary purposes and objectives. We are keen to capitalise on the influence of tastemakers – both at a community level but also at a national level (e.g., endorsement and active support of well-known public figures) – so may engage specialists to support that element of our plan We are aware of the work already conducted by one agency on the initial branding work and will engage with them after approval as an SA has been granted. Our members and major producers and return point operators have their own network of agencies and channels. Part of our plan is to work with these groups and seek collaboration and complementary approaches for the campaigns affecting their stakeholders. Whilst it's unlikely we will be influenced in agency selection by who they use, we are keen to explore who links with them can improve the effectiveness of our campaigns You describe an inhouse team of two, with one role being Head of Communications and marketing. What would the other role be responsible for? <p>The other role is a support/assistance role, but with sufficient skills and experience in the domain to undertake specific marketing-related projects or activities in their own right, which may not fit within the more major scope of work placed with agencies. This could include internal comms, marketing support to community groups and marketing query response from producers or return point operators.</p>

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- How will you operate, or work with others to establish, voluntary return points where there are significantly more containers returned than sold?

- How would you monitor return to establish this?
We will design our IT system to be able to report to individual RP level and compare rates with other RPs. We also expect to have estimates of numbers of containers sold at each RP (we will use this information as input to our collection frequency level). So we will have some indication of RPs which have a variance in their return rate compared with an average. It could be argued that a variance above or below an average could indicate a lack of collection capability in the RP area, but clearly a lower return rate is much more of a concern to a SA.
- At what point would it be decided an intervention was necessary?
The variance described above is one trigger to consider an intervention. Others would include direct contact from existing RPs, community groups, local authorities, community councils, transport hub operators and members of the public, who may highlight a perception of a lack of return points in their areas. We will have a customer service function which will be trained and equipped to deal with contact from a wide range of stakeholders (not just RPs and producers).
- What action would you consider to remedy this?
If from the trigger point discussion we deem further investigation is required, we would open a case and examine the area and circumstances in more detail. This could include more direct contact with existing retailers in the area, further data analysis, and examination of other sources to assess the root cause for the variance detected. Part of this assessment will also start to explore options for candidate return point operators.
Ultimately we would expect to develop a simple business case for any new voluntary return point that CSL would instigate. We would develop that in conjunction with the voluntary return point operator, and depending on the scale of variance or issue there could be investment from CSL (e.g., local targeted marketing, financial support etc.). Part of any intervention is to ensure we have accurate methods of assessing the impact to ensure the voluntary return point is addressing the original issue.

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Question(s) from application form	Additional information sought
<ul style="list-style-type: none"> How are you ensuring legal compliance with all required regulations and standards for delivery of necessary infrastructure and logistics? 	<ul style="list-style-type: none"> What KPIs and SLAs will you put in place for logistics and infrastructure services to ensure contractors support Circularity Scotland’s compliance with the Regulations and other legal/regulatory standards? <p>As part of the detailed operational and commercial design CSL will determine the level of performance required (in output and outcome terms) from our logistics and infrastructure service providers. These service levels will form the core requirements of contracts we agree with those providers. In order to assess delivery against the required service levels we will stipulate a range of metrics that will form part of the regular contract reporting and performance monitoring function. Examples of such performance KPI’s include: [Redacted]. Targets for each KPI will be agreed within the contract, and reviewed on a monthly basis.</p> <p>One of the core selection criteria within the procurement process for logistics and operations is the ability to demonstrate world class performance in all areas of regulatory and legal compliance. This will be assessed by the board of CSL prior to the selection of preferred service providers. A full audit of regulatory and legal compliance will be completed by experienced operational staff at least six months prior to scheme go live. Enshrined within the contracts agreed with service providers will be the requirement to report any non-compliance to regulatory and legal standards within a defined time period.</p> <p>[Redacted].</p> <ul style="list-style-type: none"> How will you address poor performance against these standards? <p>If performance for a scorecard KPI falls below the agreed target, the service provider will be required to present and agree a documented improvement plan to CSL, including defined tasks, responsibilities and timescales. All remedial actions are at the sole cost of the service provider. Ongoing failure to achieve agreed performance targets will result in the termination of the contract. The contracts will define penalties for poor performance, and bonuses for excellent performance, driven by the scorecard approach described above.</p>
<ul style="list-style-type: none"> How are you going to service the number of return points to which consumer packaging is likely to be returned? 	<ul style="list-style-type: none"> Where do you envisage the counting and bulking centres will be located (a map would be helpful) and how were these locations arrived at? <p>[Redacted]. Detailed modelling techniques were used to map the creation of empty containers from approximately 2.5 million domestic residences to potential return point locations. Collection routes were built to achieve target collection frequencies for each return point, and then mapped back to either bulking centres or counting centres. Bulking centres are only used to consolidate loads where it can be shown they improve transport efficiency, and reduce both environmental impact and cost. The number and location of counting centres has been optimised using environmental impact, transport efficiency and operational risk as the key drivers.</p> <p>[Redacted].</p> <ul style="list-style-type: none"> What assessment have you carried out of the time and cost of servicing return points (recognising work is ongoing to establish an up-to-date number of return points) including loading and unloading and transit times? <p>[Redacted].</p>

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	<ul style="list-style-type: none">• What size fleet and number of staff do you anticipate will be required to carry out this activity and how was this arrived at? <p>CSL believe that the best way to collect scheme material from return points is to utilise vehicles and crews that are already delivering to or driving past these locations on a daily basis. Examples would include newspaper and magazine delivery, existing waste collection services and parcel delivery. This is an example of backhaul, refilling declining loads on existing delivery routes. Compared to a new and dedicated fleet, this solution has a much lower environmental impact, is lower cost, and has a lower implementation risk. So the actual number of vehicles and staff involved could vary depending on the scale of unutilised capacity available from our service providers – and the significant majority of those staff and vehicles will be existing. Discussions with potential service providers have included the size and composition of their available fleet. The model mentioned above was used to calculate the number of additional hours required to carry out the collection service. [Redacted].</p> <ul style="list-style-type: none">• What assessment has been made of the potential to use backhaul to service return points more efficiently? <p>[Redacted].</p>
<ul style="list-style-type: none">• What infrastructure will you use to identify and verify that containers returned belong to producers that you are acting on behalf of?• How are you ensuring this infrastructure is appropriately sized and can provide either redundancy or if additional capacity is required?	<ul style="list-style-type: none">• What minimum standards/specification do you have for the counting and sorting centre equipment? <p>[Redacted].</p> <ul style="list-style-type: none">• What in high-level terms does the design and staffing of the counting and sorting centres look like to ensure swift, accurate handling of containers and verification of return-point data? <p>[Redacted].</p>

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From: [Redacted]@Circularityscotland.com
Sent: 08 March 2021 22:00
To: [Redacted]@gov.scot
Cc: DRS SA Assessment DRSSAssessment@gov.scot, [Redacted]@gov.scot; [Redacted]@Circularityscotland.com
Subject: RE: Urgent - further information requested - finance [UNSCANNED]

Hi [Redacted]

Please see attached our response to your questions (with the usual password). I'm afraid it is unlikely we have been unable to provide the level of detail in the financial statements that you require – as we stated in our application there are parts of the model which are highly commercially sensitive and we assess the risk of their release by you under FOI/EIR as too high to include. We would be happy to host a call with your finance review team to address any further questions they may have.

Best regards
[Redacted]

[Redacted]@Circularityscotland.com *(please use this email address for all Circularity Scotland business)*



From: [Redacted]@gov.scot
Sent: 05 March 2021 17:15
To: [Redacted]
Cc: DRSSAssessment@gov.scot; [Redacted]@gov.scot
Subject: Urgent - further information requested - finance
Importance: High

Hi [Redacted]

We consider that some further information in respect of finance would support us in reaching a view on whether your application meets the criteria in the Regulations. I have set out our requests, against the questions from the application form to which they refer, in the attached.

I'd be grateful if you could provide the relevant information, which will be treated as forming part of the application, **by close of business on 8 March** if at all possible.

As ever, happy to discuss if this raises any concerns—in particular, it may be helpful for us to speak about the request for a copy of the financial model (insofar as this can be shared without disclosing data that could prejudice ongoing commercial negotiations) as I know from earlier conversations with you that this may require some work to provide.

Many thanks

[Redacted]
Circular Economy Unit

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**Environmental Quality and Circular Economy Division, Directorate for Environment and Forestry,
Scottish Government**

[Redacted]

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Question(s) from application form	Additional information sought								
<ul style="list-style-type: none"> A breakdown of costs and revenue streams in the format of a P&L account and Summary Balance Sheet for a five-year period How will increased costs or reduced revenues be compensated for to ensure sufficient funding is available? 	<ul style="list-style-type: none"> Please provide any sensitivity analysis you have carried out showing the impacts on your financial sustainability of any changes in key underlying parameters, in particular return-point numbers and volume of returned containers <p>Within our model we can change individual parameters and assess the impact on producer fees. Our model is designed to determine the PF to achieve a desired post tax target profit. In the first years this target profit is positive to build an operating reserve, whilst at the same time providing a level of protection against adverse costs and revenues variance. As a not for profit organisation this target reduces to zero in subsequent years.</p> <p>We modelled a scenario where the number of return points increased by 100%, to c35k. Based on our analysis of the Food Standards database, we have assumed these are all manual return points. Making some assumptions about exemptions, and changes in collection frequency given lower volumes per return point, our collection and processing costs would increase by 20%. This flows through to an increase in producer fee of between 6% and 19% depending on the material (the biggest increase is for aluminium, which had a low PF and so a disproportionate impact in change as a result of varying the variable cost recovery element of that fee).</p> <p>The element of the financial model that will have the biggest impact is the retail handling fee. In the first year of full recovery at 90% [Redacted] This fee is based on previously published RHF values, but CSL will appoint an independent body to calculate the actual values for live operation. We can only speculate what the result of that assessment will be, but as an example, a [Redacted] increase in the RHF would have the following impact on the producer fee:</p> <table border="0" data-bbox="1288 940 1644 1075"> <tr> <td colspan="2">Material type</td> </tr> <tr> <td>PET</td> <td>+22%</td> </tr> <tr> <td>Aluminium</td> <td>+65%</td> </tr> <tr> <td>Glass</td> <td>+19%</td> </tr> </table> <p><i>(again note that since the aluminium PF started at a lower level – given the higher material value per container – and the additional cost is allocated evenly across all containers, its percentage increase is higher than the PF for other materials)</i></p> Please provide the financial model underlying the summary financial statements (to the extent this is possible without disclosing data that could prejudice ongoing negotiations); in particular, we would like to see: <ul style="list-style-type: none"> How the assumptions about container POM and return numbers translate into deposit flows, return-point handling fees, producer fees, and material sales. <p>Containers placed on market are static and set to the FBC numbers totalling 2.17bn. The deposit flows are shown in the deposit liability account attached. RHF values are as set out in the final FBC, modified to reduce RVM return volume by 10% and transfer this to a takeback category at a notional 5p per unit. Given the uncertainty surrounding the veracity of current data we have generally used the material resale values from FBC. Producer fees are calculated to recover costs and achieve a post-tax profit level (see above) having taken into account material recoveries and, where available, unredeemed deposits.</p> How the logistics and infrastructure model set out in the operating plan translates into the operating costs set out in the Profit & Loss Statement. <p>Logistics and infrastructure costs are included within the SA operating costs on the P&L which also includes CSL Head Office costs. Logistics costs are highly commercially sensitive as we have yet to undertake a selection exercise and do not wish our estimate to become known prior to contract signature. We are happy to participate in a call to provide more details.</p> The application highlights some changes in underlying assumptions from those set out in the published FBC Stage 1 Addendum (e.g. removing the assumption of 0.25% annual growth in number of 	Material type		PET	+22%	Aluminium	+65%	Glass	+19%
Material type									
PET	+22%								
Aluminium	+65%								
Glass	+19%								

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	<p>containers placed on the market). Have you made any other significant deviations from those assumptions other than what is explicitly called out in the application? The key changes made since FBC1 are:</p> <ul style="list-style-type: none"> ○ Return rate for RVMs. See above - reduced from 85% to 75%, with the 10% allocated to take back (this factors in the recent substantial uplift in online shopping and the expectation that it will stay as a high percentage after the pandemic has passed) ○ Increased return rate in early years given uncertainty surrounding the split between Scottish only and UK wide article EAN coding (effectively this a pessimistic assumption in the context of the producer fee – high return rate implies higher PF) ○ SA direct costs as per our model. By moving to a fully outsourced model we have reduced the CAPEX requirements, and by incorporating additional efficiency improvements we have also been able to reduce OPEX. ○ No inflation on material resale values given market volatility surrounding these commodity prices ○ Changed observatory period from 5 years to 3 years ○ Glass is assumed to move through the system naturally broken, rather than whole. There are some additional sorting costs but these are outweighed by reduction in operating costs
<ul style="list-style-type: none"> • A statement that demonstrates sufficient funds are or will be made available to cover these costs. Where appropriate your statement should demonstrate that there is access to sufficient borrowing resources. Supporting evidence of this needs to be provided and included with the submission of this application 	<p>[Redacted]</p>
<ul style="list-style-type: none"> • Description of corporate governance approach and the systems and processes that will be established to prevent and mitigate fraud and theft 	<ul style="list-style-type: none"> • What scenario planning have you done to establish what form fraud might take and how will you mitigate the risk of fraud in each of the most likely scenarios? We believe that the highest risk of fraud arises from redemption of deposits from articles on which a deposit has not been paid – either through under reporting or through the return of articles purchased outside of Scotland. We will monitor return rates at EAN code level and the producer will be responsible for the excess producer fees and deposits in circumstances where this rate exceeds 100%. We will also have a comprehensive analytics capability to identify abnormal return rates e.g. by EAN compared to other similar products, by producer, by return point etc. We will have investigators using this data to undertake detailed investigations where fraudulent activity is suspected and, where proven, will result in action against the producer to recover costs or at worst terminate their contract. In terms of losses between redemption, manual return point returns will be counted, RVM returns on a reconciliation (weight) basis. Post counting, material recovery and sales will be reconciled to declared data We will use a differential producer fee rate table to encourage adoption of unique Scottish SKUs for all but the lower volume SKUs. Our core principle is to allocate the cost of fraud as far as possible to the producer of the SKU subject to fraud or error, and our detection and investigation approach is based on that principle. • What steps will you take to ensure that your IT systems cannot be used to commit fraud? Our systems will be designed to provide for the highest levels of access control, security and encryption. All transactions will be recorded, time stamped and logged against a user. We will have contractual obligations with any third party supplier to maintain high data security standards. Data interfaces will be validated prior to application. We are acutely aware of the increasing threat from cyber crime and threats from outside CSL, and will ensure the logical and physical design of the systems adopt the current approved standards for such threats. A significant amount of data

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	<p>analytics and reconciliation will be incorporated to highlight abnormal trends including those described above.</p> <p>We are in discussion with several existing DRS scheme administrators in Europe to explore use of their systems – one of the reasons for this approach is to be able to learn, and incorporate security functionality, from existing schemes.</p> <p>Any staff working with commercially sensitive information will have full criminal history checks performed.</p> <p>CSL are also committed to ensuring that, where practicable, new technologies are introduced to improve security e.g. serialisation.</p>
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Question(s) from application form	Additional information sought
<ul style="list-style-type: none"> Provide more detail on the operation of the logistics and infrastructure services 	<p>The approach of CSL has always been to adopt the content of the ZWS TOM without change wherever possible. With reference to pages 44 to 88 of the TOM v3.3 made available on Friday 3rd April 2020, the only changes deemed necessary by CSL are related to:</p> <ul style="list-style-type: none"> glass naturally broken (throughout) working days per week (throughout) the 17000 return points assumption (page 44) the 85% through RVMs assumption (page 53) bulking centres/counting centres (pages 57/58) counting centre headcount (page 75) counting centre specification/capex/opex (page 80/81/82) driven by fewer machines <p>CSL have adopted the principle of glass naturally broken as soon as possible after counting, driven by three factors. A trial carried out by a large waste management company showed that the quality of glass lost to fragments that are too small to colour sort is significantly lower than assumed within the original ZWS work. The ZWS assumption was of a 5% loss on each of 5 movements giving a total loss of 25%. The source of this data is uncertain. The trial, involving 4 different batches of significant weight, showed a loss of less than 1% on average (being smaller than the 5mm threshold for colour sorting) from being deposited into an RVM through to sorting. Therefore, the environmental impact of allowing naturally broken glass is much less significant. As glass returning through automatic return points is now broken, transport efficiency is enhanced, and fewer counting machines are required, reducing both capital and operating costs. Finally, naturally broken glass allows large hospitality sites to operate in a way similar to that of today. The challenges of glass whole in a hospitality setting are formidable. This assumption change has been universally welcomed by all concerned. The impact of allowing glass naturally broken has been [Redacted], using models initially developed by ZWS. [Redacted] It is also worth noting that the feedback from one of our potential partners who is closely involved in the operation of a scheme in Europe is that a 10% rate of fraudulent activity is experienced with whole bottles.</p> <p>The TOM assumes a 5 day per week operation. The vast majority of the retail community in Scotland operate 7 days per week. In order to provide the best possible service to our retail partners CSL have decided to provide a collection and counting service that mirrors their operating hours. This also ensures the smooth flow of scheme material through the supply chain to facilitate earlier repayment of redeemed deposits to return points, and makes the best use of free capacity on vehicles that are already on the road seven days per week. All retail store replenishment routines work seven days per week, thus enabling backhaul opportunities seven days per week. The two pure transport organisations currently included in the partner selection process already operate seven days per week. Appropriate working arrangements will be agreed with drivers and operators.</p> <p>There are two high level assumptions within the TOM that have always concerned CSL. The first is the number of return points, assumed to be around 17400. When one food service wholesaler delivers to over 20000 locations in Scotland, the original assumption always appeared low. Further work by CSL with [Redacted] used a Food Standard Scotland database of hygiene inspections to develop a more robust assumption. Using categories in the database, and key word searches, the current estimate of potential return points is around 37000, prior to any impact of the exemption process. The second high level assumption under question, and probably more important in this context, is the percentage of returns via an automatic return point (85%) vs manual (15%). [Redacted] for ZWS showed this to be closer to automatic (89%) vs manual (11%). However, it would appear that it a split of automatic (91%) vs manual (9%) was used in the counting centre cost spreadsheets produced by ZWS. Further enquiries were unable to determine the rationale for the 91% vs 9% split. [Redacted] continued to use the 89% vs 11% split for work with CSL, but this will be subject to significant review when the online shopping collection process becomes clearer. The ZWS assumption on this within the FBC shows online takeback volumes appearing as manual returns, but given the substantial increase in online shopping during the pandemic for all major retailers, we have assumed 10% of returns will move from RVMs to takeback.</p>

Bulking or consolidation centres are used to combine several small loads onto a larger vehicle prior to driving a longer distance in order to reduce the overall miles travelled, and hence the environmental impact and cost. The use of a bulking centre almost invariably introduces a dog leg into the onward movement of goods, and a cost associated with the cross docking of the load. For a bulking centre to be financially viable, the transport benefit of the larger load has to be greater than the additional costs of the dog leg and cross docking. Let's consider the following artificial scenario:

- A is the end of the collection route
- B is the counting centre
- C is the bulking centre
- for ease of calculation, ABC are a right-angled triangle
- AB is 50 miles
- AC is 30 miles
- CB is approximately 40 miles
- Unbulked transport cost £0.6/tonne/mile
- Bulked transport cost £0.3/tonne/mile
- Cross docking cost £35/tonne

The direct cost is (50 miles * £0.6/tonne/mile) = £30/tonne

The cost via the bulking centre is (30 miles * £0.6/tonne/mile) + £35/tonne + (40 miles * £0.3/tonne/mile) = £65/tonne

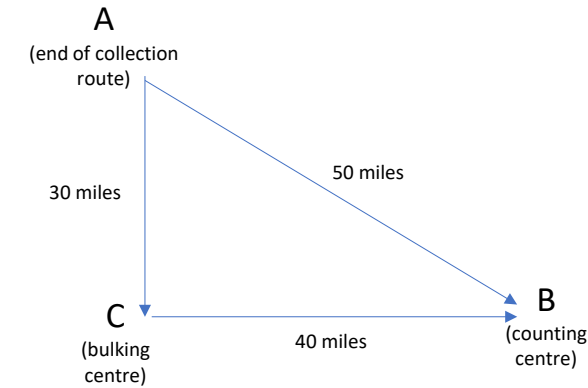
So in this hypothetical case, it is more expensive to use a bulking centre than not, and that the dominant factor in the analysis is the cross-docking cost. Even if the cross-docking cost were to drop to say £10/tonne it is still more cost effective to avoid the bulking centre.

One touch logistics techniques are based on using bulking centres to consolidate smaller loads only when they can be proved to be more cost effective, and hence less impactful environmentally. The ZWS assumption was that all scheme material was routed via bulking centres irrespective of the cost analysis. In addition, the cross-docking cost used by ZWS in their analysis looked very high. CSL calculated the cross-docking cost from first principles (based on an activity based costing model), and used this to determine the approximate distance from a counting centre that a bulking centre would become financially viable. Whilst this information is commercially sensitive, the above worked example illustrates the point. This analysis, [Redacted] showed a requirement of 8 bulking centres, and unsurprisingly the locations are very similar to those initially identified by IS for ZWS.

The number and location of counting centres is a compromise between the running cost of the centre, inbound transport costs and operational flexibility. It is important for the stability and reputation of the scheme that counting capacity is available elsewhere if one centre runs into difficulties. [Redacted]

[Redacted] . The number of counting machines required compared to the original ZWS work has been impacted by a number of factors. The biggest of these is the move to glass naturally broken, meaning that glass collected via RVM no longer needs to be counted. Following discussions with a major counting machine supplier on machine throughputs with the relevant batch sizes, there appears to be different assumptions, or calculation errors, in the counting centre cost spreadsheets developed by ZWS. CSL currently estimate that around [Redacted] counting machines are required, compared to the 50 predicted by ZWS, dependent on hours of operation and the like. Again, this may be impacted by the work to refine the assumptions of the number of return points and the impact of online shopping collections.

On takeback for online shopping, we have commenced detailed discussions with major retailers on the process to collect containers and refund customers their deposit. A core design principle is to provide a consistent customer experience as far as possible, irrespective of the retailer they use. Early design sessions are considering aspects such as the use of small



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	<p>polyethylene bags for collection (as used in the Norway scheme), and processing of the bags either through a counting centre, or at local RVMs.</p> <p>CSL have maintained a rigorous process whilst developing a financial model for DRS logistics and counting centres. It was a three stage process:</p> <ul style="list-style-type: none"> ○ validate the original ZWS operating model, assumptions & output ○ develop a new operating model, assumptions & output maintaining glass whole ○ quantify the impact of allowing glass naturally broken <p>In the first stage, each and every assumption made within the TOM v3.3 was scrutinised and validated. In many cases CSL increased spend, such as moving driver rates to the current market rate. At all stages CSL were [Redacted] using the same basic models created for the work commissioned by ZWS. Although commercially sensitive, there is a document that details all assumptions, the source of all information and data, and the impact of each change made to the operating model, both in terms of operating costs and capital. Even after the small reinvestment to enhance counting centre flexibility, the current operating costs are less than 50% of the TOM v3.3.</p>
<ul style="list-style-type: none"> • Provide details of the experience and capability of potential partners 	<p>[Redacted]</p>
<ul style="list-style-type: none"> • Provide more detail on how we will comply with all appropriate waste management requirements 	<p>Whilst according to some legislation, returned containers are regarded as waste, CSL regard returned containers as a valuable product, both for the generation of income but also for the supply into the circular economy models supported by our partners, members and customers.</p> <p>However, CSL will always ensure that it and its partners and suppliers comply with all required health and safety, environmental, waste and other standards. We will deliver this in a number of ways:</p> <ul style="list-style-type: none"> ○ Stipulation of the required compliance in our partner contracts ○ Additional contract clauses to permit audits and inspection, and to incentivise correct behaviour and penalise compliance failures ○ Appointment of an Operations Director and Contract Managers with the set of skills and experience to ensure CSL and partner compliance <p>For each of the key stages in DRS, with specific regard to waste licensing, we will adopt the following approaches:</p> <ul style="list-style-type: none"> ○ Any requirement for waste licencing at automatic return points will be a matter for the retailer but we will ensure that in collecting waste from these locations our partners comply with any necessary handover requirement ○ Our logistics partners will ensure compliance with waste carrier requirements and if required CSL will register as a waste broker. In our backhaul discussions we are exploring current waste licensing held by retailers and will ensure any shortfalls (as a result of taking on DRS containers) are addressed before contracting with them ○ We expect our logistics partners to manage our bulking centres, and will ensure they comply with the waste management licensing requirements for waste transfer and management at these sites ○ We expect our counting centres to be co-located at the existing waste processing sites of our partners and are therefore confident (given their many years of waste management experience) that they will comply with any additional requirements brought by the processing of DRS containers. But as above, our contracts with these partners will mandate compliance and allow various inspections etc. Knowledge of and experience in such processing sites will be a key selection criteria for the appointment CSL's operations and contract management staff ○ The sale of sorted material to reproprocessors will follow the specific waste management requirements for this function. CSL anticipates entering into longer term contracts for PET reprocessing (to facilitate investment in a polymer plant) and into standard term contracts for other materials – each contract will require appropriate waste management compliance and will allow inspection/audit etc. <p>We are keen to seek guidance and confirmation from SEPA in all these matters and prior to the contract definition phase we would intend to engage directly with them.</p>

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From: [Redacted]@Circularityscotland.com

Sent: 09 March 2021 11:17

To: [Redacted]@gov.scot

Cc: DRS SA Assessment <DRSSAassessment@gov.scot>; David.Barnes@zerowastescotland.org.uk

Subject: RE: Logistics and infrastructure [UNSCANNED]

Hi [Redacted]

Please see attached a response to the 3 additional points you raised with me yesterday on the logistics and infrastructure section. We have taken your suggestion of highlighting those parts of the TOM which are still applicable, and describing the areas where we have made substantial changes. The TOM has served as a useful input to the design of our logistics and infrastructure approach, but our build and procurement approach doesn't require the ongoing adoption of that type of document. I hope the attached submission addresses your questions.

Best regards

[Redacted]



Summary Business Plan

1. Summary Business Plan for Circularity Scotland

1.1 Summary

The Deposit Return Scheme forms a core part of the legislation to deliver Scotland’s environmental objectives over the next decades. It will be delivered by industry as part of their wider producer responsibility obligations, and has been shown by the Scottish Government’s Economic Case that it is the most efficient way for industry to fulfil their obligations in this space for single use drinks containers. A scheme administrator company (Circularity Scotland Limited – CSL) will be created to run the scheme in Scotland.

The legislation had cross party support when it was passed by the Scottish Parliament on May 2020, with an implementation date of July 2022. It also has broad public support and will directly benefit communities by reducing litter and encouraging behavioural change in how we deal with waste. Scotland is following in the footsteps of more than 40 other countries with DRS implementation, and the governments at Westminster and Dublin are in advanced planning for their own legislation. The public, commercial and political awareness of the impact of plastic and other waste on our society will act as the greatest driver to ensure that this legislation *will* be implemented.

The companies behind this proposal are the biggest producers and retailers in the UK and Europe. They have shaped the work to date and will be members of the company moving forward – continuing to provide oversight but also ensuring that the company is formed and delivers.

In full implementation CSL will have turnover in excess of [Redacted] per annum, and cash reserves of more than [Redacted] . It will be a not-for-profit entity, with its 4500 producer customers contracted to ensure its income will always cover its expenses. It will acquire ownership of a [Redacted] low contamination waste stream which is already attracting interest from investors in new reprocessing facilities in Scotland. CSL will require an in-life banking partner to support the millions of cash transactions expected each year, and provide the banking support and innovation expected for a company of this nature.

The same group of companies are in discussions with Defra to shape legislation and delivery models for the DRS in England and Wales (expected go live 2024). CSL has been designed to be capable of extending its operations to deliver that scheme – moving it to a company with turnover in excess of [Redacted]

The company is seeking [Redacted] in debt finance project funding to deliver the implementation programme, [Redacted] . It wants to work with a banking partner to design a suitable funding package, work collaboratively on a joint promotion campaign and design an in-life banking model that brings innovation and efficiency to the company’s operation.

This project is the landmark environmental investment of the decade and will set a model to rollout into the rest of the UK and potentially other countries around the world.

1.2 Introduction

This is a summary business plan to provide the required detail to prospective funders on the nature of the DRS Scheme Administrator business and the implementation activities required to launch it in 2022, to support a funding decision for the implementation of the scheme.

1.3 Legislative Drivers and Scheme Benefits

The Scottish Government is committed to creating a more circular economy where things are made to last, preventing litter and addressing climate change for the betterment of our environment, economy and society. The government has committed to ambitious targets to increase the recycling rate and recognised that fresh interventions are needed to bring about the systemic and behaviour change necessary to fulfil these aspirations.

It is against this backdrop that in the 2017 Programme for Government, the First Minister committed to introducing a Deposit Return Scheme (DRS) for drinks containers for Scotland. The supporting legislation was passed in Parliament in May 2020 with cross party support and comes into force in July 2022.

The scheme Full Business Case demonstrated how a successful scheme will contribute to Scotland's 2025 target to increase the total national recycling rate to 70% (the scheme will deliver 90% for drinks containers) and to Towards a Litter-Free Scotland, the national litter strategy which aims to drive a wholesale shift in national policy and practice towards prevention. It reflects the aim of Scotland's circular economy strategy, Making Things Last, to ensure that as many materials as possible are kept in high-value use, through a closed loop system and/or high-value recycling. The DRS, and the social and economic benefits which it seeks to deliver, also sit within the context of the Scottish Government's Economic Action Plan.

Four investment objectives have been identified which informed the development of the scheme design and against which its impact will be measured:

- Improving recycling quantity.
- Improving recycling quality.
- Encouraging wider behaviour change around materials.
- Delivering maximum economic and societal benefit for Scotland during the transition to a low carbon world.

Support amongst the public for the introduction of a DRS is high, with a poll for ITV (2,000 people, UK) indicating that 75% of people would support the introduction of such a scheme.

It is in the context of this legislative framework, and the wide range of societal and economic benefits, that the proposal to build and operate a company to operate the scheme, and deliver the policy objectives and benefits, is made.

1.4 Overview

Scotland's Deposit Recovery Scheme (DRS) legislation allows for the creation of an administrator company to act on the collective behalf of producers in fulfilling their legal obligations. A group of producers and Trade Associations is working with industry partners to establish Circularity Scotland Limited (CSL) to act as that Scheme Administrator (SA) for those producers who appoint it. The new

company will therefore need to set up the processes, systems, infrastructure and staffing required to deliver those obligations by the agreed scheme go live date.

Once in operation the company will be self-sustaining financially and will be able to pay back any loans made to it.

1.5 Objectives and Use of Funding

Funding is required for the [Redacted] implementation programme to cover the various contractors and staff needed, accommodation and office IT, the purchase of an IT system to manage the scheme, the appointment of service companies to deliver logistics and waste processing, purchase of some capital equipment to support logistics, and the payment of a range of professional fees.

1.6 The Deposit Return Scheme

The Scottish Government has introduced legislation for a deposit return scheme (DRS) for single-use drinks containers, to help improve quality and quantity of recycling, reduce litter and achieve their climate change targets. Consumers will pay a 20p deposit when buying drinks, and will reclaim that deposit when they return the empty containers. The scheme will be funded by the producers of those drinks, and they will be expected to collect at least 90% of containers placed on the market, once the scheme is fully established. Producers can appoint an agent (a scheme administrator) to act on their behalf in collecting returned containers from retailers, processing them and selling them on to material recyclers.

1.7 The Scheme Administrator

A group of producers and producer trade bodies are currently developing an application to seek approval to operate as a Scheme Administrator for DRS. The establishment of the scheme will require the setting up of a new company to operate the scheme (including equipment, systems and various operating contracts). The operating company will be established as a Company Limited by Guarantee. Its income sources will be:

- Unredeemed deposits [Redacted] (deposits returned to retailers are expenses – net unredeemed deposit income is [Redacted])
- Sale of materials [Redacted]
- Producer fee (top up to cover expenses) [Redacted] reducing to [Redacted] once unredeemed deposits can be recognised as revenue) – contracted income from its customers

Its customers are therefore the estimated 4500 producers operating in the Scottish market (ranging from Coca Cola European Partners to local micro breweries).

It also needs to establish working relationships with all retailers, pubs, restaurants, cafes, takeaways and other establishments which sell drinks, to arrange for collection of containers returned by the public at any of these locations (estimated to be 35-40k).

1.8 Unique aspects/competition

The legislation does not limit the number of Scheme Administrators that can operate in Scotland. There are, however, substantial barriers to entry for any more than the current proposal:

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- The seven organisations initiating this proposal represent c75% of all drinks containers placed in Scotland.
- The first call for expressions of interest in becoming a member of the CSL Scheme Administrator attracted interest from companies who represented c80% of all containers placed on the market. A condition of membership of the company is that members must appoint CSL as their scheme administrator agent
- The current call for expressions of interest has been revised to broaden appeal to retailers who produce own-label products – this is expected to bring membership representation to more than 90% [Update MAR21 – member producer companies represent c90% of production volume in Scotland, and member retailer companies sell c85% of scheme articles in Scotland]
- Any scheme administrator must seek approval to act as one from Scottish Ministers. They will be looking for evidence of financial sustainability. Without a substantial percentage of producers supporting a scheme administrator, the costs associated with running logistics and counting centres would not allow that sustainability to be evidenced by another applicant with less than 10% of containers pledged to it

The team behind this proposal have been working on DRS, in government and the private sector, for 2 years and have built the necessary set of relationships and capability to succeed in delivery. They are backed by the biggest drinks producers in the UK, and liaise closely with government officials to jointly monitor progress.

The company will acquire ownership of the waste material in scope of DRS, diverting it from the less efficient kerbside collection systems in place across the country. This waste stream will have very low contamination and will be of food grade. Rights to purchase this waste is already of very high interest to the companies who are considering investing in PET plastic recycling in Scotland (many through Scottish Development International).

1.9 Operating Model

- A core principle of the design of the company's operations is to use existing capacity and capability already in the market, to reduce costs and reduce environmental impact
- The largest part of the operation will be to run a collection/logistics service to visit every return point and pick up returned containers. To improve efficiency some of these containers will be aggregated at bulking centres then transported to [Redacted] counting and processing centres across Scotland. Containers collected from small stores/pubs (where each container is kept whole) will be check-counted and sorted. Containers returned from larger stores will be flattened as a result of collection through a Reverse Vending Machine – these containers will simply need sorted by material. Sorted material is then transported to material processors (for glass, aluminium and plastic).
- The company will process and track all financial and container transactions across the scheme. This will require an information management system and a small team of finance and data analysts
- Significant initial and ongoing expenditure will be required for communications, to raise awareness in key stakeholder groups like producers and return point operators, and (in collaboration with the regulator and the Scottish Government) to support behaviour change in consumers. Ongoing, additional communications will be required to identify and target consumer segments where return rates are lower than desired.

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v3.03 SG FEB21

- Other staff will be required for customer service, reporting, stakeholder management and compliance

1.10 Corporate Description

- Company Limited by Guarantee with members drawn from the producer community, based on sales volumes, and the retailer community (based on collection volume and numbers of return points)
- A Board comprising independent chair, sector-specific non-executive directors, and other non-executive directors drawn from finance, marketing etc.
- Executive team comprising Chief Executive, Finance Director and other resources (estimate steady state headcount will be 35-40)

1.11 Team

The implementation team comprises two elements – programme implementation and corporate governance

1.11.1 Programme Implementation

[Redacted]

Additional specialist resources will be brought onto the programme to deliver areas including ICT development, finance, communications and corporate development.

1.11.2 Corporate Governance

Activity is currently underway to appoint an Interim Chair. The core responsibilities of this role are:

- Act as senior governance for interim Board, and the implementation programme, and hold them to account for delivery of the interim operating plan and implementation programme
- Ensure that the company develops in line with all appropriate corporate and professional standards, implementing the minimum set of governance processes and practices to meet current best practice
- Be the main interface for Members, providing updates to them and dealing with member constitution matters
- Manage the senior stakeholder interface with members, other corporate leaders, SEPA, and the Scottish Government, acting as an ambassador for the company
- Work with members and interim Directors to appoint a permanent Board and Chair, and any senior executive roles required

As the last bullet suggests, the Interim Chair will gradually acquire additional support through the recruitment of the permanent Board. [Update MAR21 – an experienced FD, MD and Chair has been brought on to the team to lead the appointment of the board and deliver the responsibilities above]

1.12 Implementation Timeline

The draft programme schedule is shown below.

[Redacted]

1.13 Additional Opportunities

- CSL will require an in-life banking partner to deliver its operational and strategic banking requirements. The company is characterised by the high volume of low value transactions it will need to process
- [Redacted]
- CSL's role in the delivery of DRS will be high profile and attract attention from government, NGOs, industry and the general public. There are substantial opportunities for a banking partner to contribute to their specific ESG objectives and raise the profile of their environmental contributions across a wide range of stakeholder groups.

1.14 Financial Statements

The statements below are based on our current implementation plan and operational modelling.

The full financial models are embedded within the appendix, together with a more detailed commentary on the construction of the statements. [Update MAR21 – previous statements replaced with those used in the application]

Profit and Loss (£m)

[Redacted]

Balance Sheet (£m)

[Redacted]

Comments:

- Deposits are treated as income
- The largest element of revenue is from unredeemed deposits. Currently constructed as a deposit liability fund held for a 3 year observatory period to allow time for additional deposits to be claimed.
- An operating reserve is built up over the years to provide additional funds to cope with unexpected costs, or reductions in revenues (shown cumulatively under Members' Funds)
- SA non-staff costs includes allowance for regulatory compliance fee and communications
- Operational costs cover the operation of the logistics contracts and the costs of running counting and sorting centres

1.15 Funding Required

The cost of implementation is [Redacted] with a spend profile as follows:

[Redacted]

[Update MAR21 – note that Funding Required does not constitute actual spend for the specific activity highlighted in the Milestone column, as per our response to finance questions submitted on 18MAR21]

Project debt financing is required to draw down against that spend profile.

[Redacted]

Funding to date has been provided through loans from the 3 Trade Associations involved in the initial producer group.

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Short term funding is currently being sought from commercial loans and additional funding through Trade Associations.

[Redacted] The company is being set up to deliver a core part of the Scottish Government's environmental legislation, and with cross party support it is expected to be delivered.

Potential sources of contributing funds/collateral:

- [Redacted]
- Material sales in steady state will generate [Redacted] per annum. [Redacted]
- [Redacted] is allocated to the purchase of equipment to support logistics and collections (e.g., cages and tote boxes) – this expenditure will come in the months prior to go live

1.16 Risks

1. There will be more than one Scheme Administrator, leading to a reduction in Producer Fee income
 - a. As described above there are significant barriers to entry for a second scheme administrator
2. The implementation programme is delayed, leading to additional expenditure
 - a. Uncertainties with Covid and Brexit could yet add delay to the CSL implementation and that of retailers. The use of contract resource, and third parties, will allow expenditure to be reduced if delays are experienced
3. The programme is cancelled
 - a. The programme's core objective is to deliver critical legislation (which has now passed and will come into force next year). Producers are obliged to deliver the legislation and the scheme administrator approach has been shown (in government analyses) to be the most cost effective way of doing that. Scottish government officials have assessed the impact of the upcoming Scottish elections on the legislation and are satisfied it will retain the full support of any new government

1.17 Appendix 1 – Detailed Financial Model and Explanation

Embedded below is the full financial model, with explanatory notes in the Overview tab and throughout.

[Update MAR21 – removed]

In addition, see below for an explanation for the treatment of deposits as income, from Deloitte’s input to the government’s Full Business Case

1.17.1 Treatment of Deposits as Revenue

The scheme Full Business Case Stage 1 (published by the Scottish Government and with contributions to the Financial Case from Deloitte) indicated that the treatment of the deposits has been modelled based on the Norwegian DRS scheme. A key factor of this scheme is that the Scheme Administrator is treated as operating in a principal capacity in respect of deposit inflows and outflows, as compared to an agency capacity. The difference is that as a principal the Scheme Administrator will recognise the deposits as revenue and expenditure in its profit and loss account, whereas an agent would be responsible for managing the collection and disbursement of the deposits, but they would not be recognised as revenue and expenditure in the profit and loss account. The rationale for the principal capacity is that there is a clear distinction of receipts in (Scheme Administrator and producers) and payments out (Scheme Administrator and retailers).

- Deposits In (Revenue) - Producers are required to provide a report to the Scheme Administrator at an agreed periodicity, typically monthly, outlining the number of containers that have been sold to wholesalers in this period. The Scheme Administrator will invoice the producers for the relevant amount based on the report.
- Deposits Out (Expenditure) - Retailers will in the first instance provide consumers with their deposit refund for redeemed DRS material. Following this event, they will receive credit from the Scheme Administrator at an agreed periodicity, for reimbursement of deposits paid.

In any given period, it is possible that the value of deposits paid into the Scheme Administrator may exceed the value of deposits that are redeemed. Based on the Norwegian DRS scheme (and DRS schemes in other jurisdictions), the Scheme Administrator is in principle able to recognise and, therefore, obtain the net benefit between the revenue and expenditure in relation to the deposits (referred to in this Financial Case as unredeemed deposits). The unredeemed deposits can then be used to partially fund the scheme expenses.

Addendum to CSL Response on additional finance questions 17 March

Worked Example: Collection Costs

The original TOM produced by ZWS stated total collection costs to be £x.xm/year, split between vehicle leases, staff costs, fuel and insurance/telematics. This analysis was produced by [Redacted], using assumptions provided by ZWS. The first task completed by CSL was to validate this work. Assuming that the dedicated fleet model is appropriate, are these numbers correct? CSL scrutinised every assumption provided by ZWS and modified them where necessary. In many cases, this increased costs, as follows:

- Driver salary increased to more reflect current market conditions
- Driver employment costs increased to include holidays, sickness & training
- Vehicle capacities reduced to reflect incorrect and/or unsafe assumptions
- Driver to unload vehicle on completion of route (this reduces costs at bulking centres)

In overall terms, the driver employment costs increased by 24%.

In terms of maximum vehicle payloads:

Vehicle Type	ZWS Payload (kg)	CSL
3.5t	1049	975
7.5t	1949	1950
12t	2763	2350
18t	3062	2730
26t	3540	3120

There is an average payload reduction of around 10%.

Although the responsibility for unloading the vehicle has been shifted from the bulking centre staff to the collection driver, the unloading times have remained as defined by ZWS, so for example 25 minutes for a 12t vehicle.

Using the same [Redacted] model, the collection costs were now calculated at £x.xm/year, an increase of 13%. The vast majority of the increase are seen in staff costs, unsurprisingly.

The next stage was to consider whether other operating models were more efficient. It was felt that using a shared fleet would have less impact on the environment, be more cost efficient and have a lower implementation risk. Discussions with various transport and waste management organisations confirmed this to be feasible. The same [Redacted] model was used, with assumption changes to reduce the costs associated with driving time, and the knock-on impact on vehicle costs and fuel. [Redacted].

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Moving to glass naturally broken from glass whole reduced the costs by a further 4% to £x.xm/year, as the payload of the vehicles increases. In summary, a significant amount of cost was added in to the original TOM as assumptions were corrected, and then the overall cost of collections was reduced significantly by the adoption of new ways of working, and to a lesser extent, by allowing glass naturally broken.

Worked Example: Bulking Centres

Please refer to previous documents submitted last week, and yesterday. ZWS assumed that 100% of scheme material passed through a bulking centre on the way from the end of a collection route to a counting centre, even if it wasn't more efficient. CSL assume that bulking centres are only used when they enhance efficiency. It has been shown that when the variable handling cost and transport dog leg are included within the calculation that the threshold is around 50 miles. That is, it is more efficient for a collection route that ends less than 50 miles from a counting centre to bypass the bulking process. [Redacted] models for ZWS were optimised at 20 bulking centres around the country. 12 of these were within 50 miles of a counting centre and were eliminated. The same [Redacted] model showed that around 14% of scheme material passed through the remaining 8 bulking centres.

A roll cage of scheme material holds on average about 190kg. Hence one tonne of scheme material will usually be 5 to 6 roll cages. The roll cages will have been unloaded by the collection driver, so bulking centre labour will load them onto a departing truck. It is estimated that this will take less than 30 minutes. A labour cost has been calculated from a living wage, fully costed. Including margin and contingency, the variable handling cost is calculated to be around £xx.xx/tonne. ZWS assumed bulking fixed costs to be £18000/year. CSL have retained this for the remaining eight sites, although it appears high. Rental of secure storage for 50 roll cages of scheme material will cost less than £5000/year.

In summary, a reduction of around 86% of activity at a variable handling cost lower by around 71%.

Worked Example: Counting Machines

With glass maintained whole ZWS calculated that 50 counting machines were required. The source of the data for this calculation is unclear. CSL engaged in detailed conversations with [Redacted]. In order to maintain count integrity between batches (in this case, full sacks or totes) a dead time is required between them. The smaller the batches, the more periods of dead time are required, and the lower the capacity of the machine. CSL provided [Redacted] the batch size for glass and co-mingled metal/PET for them determine the capacity of a machine operating 15 hours per day and 350 days per year:

Glass	23 million units per year
Metal/plastic	34 million units per year

Machines are flexible and can count any material. This output was validated against a capacity chart supplied independently by [Redacted]. The e-mail correspondence is available if required.

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Assuming glass naturally broken, from [Redacted] work carried out for ZWS it was assumed that 11% of returned material would be via a manual return point and be counted. This amounts to 215 million units per year at a 90% overall return rate. 8 machines would have a total annual capacity of 228 million units. Smoothing and buffering is provided by roll cage storage at the counting centres, and flexible working arrangements. All 8 machines will be installed for scheme go live although the anticipated return rate is significantly lower than 90%.

The reduction from 50 to 8 machines represents a decline of 84%. All cost areas (labour and property are the largest categories) will be impacted in proportion. The decline in annual operating costs in the CSL proposal is 83%. Counting centres will be co-located with existing or planned recycling sites, so fixed overheads (such as a general manager) will be shared. Indicative capital costs for the machines, transport, installation and a spares package were obtained from [Redacted], as were lead times from order to delivery.

At every stage of this process, assumptions were challenged. Where possible ZWS assumptions were retained. If there was any doubt, a prudent approach was taken. Over and above this, a contingency of 50% has been added to all logistics and counting centre costs that have been presented.

Indicative costs for roll cages and totes have been obtained from a number of suppliers. Roll cages are significantly cheaper than previously assumed (by about 40-50%), and totes significantly more expensive (by about 100%).

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Question(s) from application form	Additional information sought
<ul style="list-style-type: none"> • How do you intend that retailers will know how to identify scheme articles from producers that you are acting on behalf of, or how will you mitigate their difficulty in doing so? • How would you manage both non-scheme packaging or scheme packaging that another Scheme Administrator was responsible for but was returned to you? 	<ul style="list-style-type: none"> • How will you support retailers in verifying at the point of purchase (e.g. from a wholesaler) that the items they are purchasing are scheme articles? Our base assumption is that retailers, wholesalers and other actors in the supply chain are aware of, and are complying with, their obligations under the DRS regulations, and that the regulator is monitoring for compliance and taking any necessary action to improve compliance. There are several methods CSL will implement to support retailers in this verification activity: <ul style="list-style-type: none"> - Aligned with the regulations, CSL is not mandating the adoption of a unique Scottish SKU for all containers it accepts, but we expect the significant majority to have unique Scottish EAN codes and the scheme logo on the labels, assisting in identifying the container as a scheme article - We intend to provide manual return points with an app, which can access the same database as used by RVMs to validate returned containers, and which can help identify returned scheme articles through that channel. That app could also be used during purchase to help the retailer verify that articles they are buying are within the scheme - It is in the scheme administrator’s interest that all articles collected are within the scheme. Working with the regulator we will develop and issue briefs to retailers to provide additional guidance (e.g., if in doubt ask to see evidence from the wholesaler that the items purchased have had the deposit paid) We intend that our IT system will have the capability to detect small variations in return rates by SKU - any anomaly detected will be investigated by us, potentially in conjunction with the regulator • In the case of scheme articles without an EAN code, how will return-point operators (whether manual or automatic) verify that such items returned are articles for which you are responsible? [Redacted] • If non-scheme articles and/or scheme articles placed on the market by a producer not registered through you were mistakenly identified by a return-point operator as scheme articles for which you were responsible, how would this mistake be caught and addressed? We anticipate that at least 85% of containers will be returned through an RVM. As a condition of collecting containers in a form as processed by an RVM, we will require Return Point Operators to use RVMs which comply with a minimum set of container and fraud identification capabilities. We will also require our producer customers to register all container details and EAN codes with us. The combination of these 2 requirements will mean that any container not registered with CSL, and submitted to an RVM, will be rejected. The only exception we can see here is where 2 importers place the same product on the market but only one registers the container details with us (the volumes here will be very small). We would expect to detect that situation through an unusually high return rate for the product, and be then able to take additional action A similar approach will be used at our counting centres where we will process containers returned from manual return points using high volume RVM-like machines. In this situation we will be in possession of the rejected containers and will be able to use that associated information to improve the acceptance process and tools upstream. The data used in the RVMs will also be made available to manual return points through an app, which would support identification of non-scheme articles. If, despite these controls, non-declared articles (to use the general term we have adopted for this risk) were accepted by a return point, we would catch and address the risk as follows: <ul style="list-style-type: none"> - We intend that our IT system will have the capability to detect small variations in return rates by SKU – articles with UK-wide SKUs but no deposit paid would be detected in this manner. Our producer fee rate table will have scaled charges to inhibit this, but we will also have the right to charge the deposit and producer fee for any unexpected material difference - As mentioned above, for manual return points, we would expect most erroneous acceptances to be detected by the RVM equipment in the counting centre. We will also have access to the non-scheme articles received, and our fraud team may be able to use them to improve existing controls. - Where we have evidence of producers or retailers not following the requirements of the regulations, we will pass details to SEPA for their appropriate enforcement activity

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	<ul style="list-style-type: none">- There is always the possibility of human error, perhaps in the uploading of data to the container database (used in turn to populate RVMs). We would expect to detect these using the same anomaly approach described above, and then true-up once the nature, and date of update, of the erroneous data has been found- We have started building good working relationships with the administrators of other schemes and will extend this activity over the coming months. One of the benefits of the establishment of this network is to facilitate learning and experience of fraud vectors used in other schemes, to apply to the Scottish scheme (and in time allow us to share our experiences elsewhere). This should add to our ability to detect and address the type of activity described in this question.
<ul style="list-style-type: none">• Please demonstrate what arrangements you intend to put in place to assist in meeting [the collection] targets.	<ul style="list-style-type: none">• The document titled <i>Attachment for additional information on finance_5 March 2021</i>, submitted by email at 2200 on 8 March 2021, suggests that you expect to collect 80% of scheme articles placed on the market by producers registered through you in calendar year 2025. This would imply a failure to meet the obligation under Regulation 11(1)(h) and Schedule 3 of the Deposit and Return Scheme for Scotland Regulations 2020 to collect 90% of such packaging in that year. Can you account for this? [Redacted], we adjusted the timing of container flow through the scheme in the model, but didn't account for other factors which would affect return rate over the first few years. We have corrected that and attached a revised version of the attachment you identified.

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Question(s) from application form	Additional information sought
<ul style="list-style-type: none"> Please provide information demonstrating what financing is in place or will be secured to deliver the proposed approach for those producers that you are acting on behalf of and to deliver against required targets. 	<ul style="list-style-type: none"> Please provide a copy of your organisation’s business plan or equivalent document. In particular, the following information if available would help to assess the application: <ul style="list-style-type: none"> The structure of the business The implementation plan for the business Your recruitment plans especially at Board level Description of business operations Detailed financing plan Financial plan <p>We have submitted a copy of the business plan prepared in February to support discussions with potential lenders (some key sections have been updated to reflect the position in our application and these are highlighted in coloured text). We have provided below, against your bullets above, some additional considerations:</p> <ul style="list-style-type: none"> The structure of the business <ul style="list-style-type: none"> Largely covered in the business plan. This is the proposed structure at Board/Exec level: <div data-bbox="1291 730 2062 1470" data-label="Diagram"> <pre> graph TD subgraph Board Chair[Chairperson (Non-Exec)] subgraph SkillSpecificNEDs [Skill-specific NEDs] NED1[Ind. Non-Exec Director (Finance)] NED2[Ind. Non-Exec Director (Marketing)] NED3[Ind. Non-Exec Director (Environment)] NED4[Ind. Non-Exec Director (Operations)] end subgraph SectorSpecificNEDs [Sector-specific NEDs] NED5[Ind. Non-Exec Director (Grocery Retail)] NED6[Ind. Non-Exec Director (Alcoholic Drinks)] NED7[Ind. Non-Exec Director (Conv. Wholesale Hospitality)] NED8[Ind. Non-Exec Director (Soft Drinks, Natural Source Water)] end end Chair --- SkillSpecificNEDs Chair --- SectorSpecificNEDs CEO[Chief Executive (Exec Director)] FinanceDir[Finance Director (Exec Director)] OpsDir[Operations Director] ServDir[Services Director] CEO --- FinanceDir CEO --- OpsDir CEO --- ServDir FinanceDir --- F1[Management and financial accounting] FinanceDir --- F2[Audit and fraud] OpsDir --- O1[Contract management] OpsDir --- O2[Waste] OpsDir --- O3[Customer services] ServDir --- S1[IT] ServDir --- S2[Marketing/comms] ServDir --- S3[IT] </pre> </div> The implementation plan for the business <ul style="list-style-type: none"> Our implementation approach is covered in the Application, acknowledging that a detailed plan has not been submitted for the reasons described in the application. As stated in the application we believe we will have greater clarity over the remaining risks and uncertainties by summer 2021 and will be in a position then to share more accurate detail. We would also expect to be able to share more accurate detail with the gateway review team when it starts its work. Your recruitment plans especially at Board level <ul style="list-style-type: none"> As indicated in the business plan we have recruited an experienced FD/MD/chair to lead on the appointment of the board. Our current plan (expected to be ratified by members in early April) is to appoint 2 additional interim directors and an interim chair to provide

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	<p>corporately and programme governance, and to appoint the main board. These additional board members will be selected on the basis that they are prepared (if approved by members) to put themselves forward for permanent board positions.</p> <ul style="list-style-type: none"> ○ Description of business operations <ul style="list-style-type: none"> ▪ Covered in the business plan, the application, and responses to previous questions ○ Detailed financing plan <ul style="list-style-type: none"> ▪ Covered in the application and the response to previous questions ○ Financial plan <ul style="list-style-type: none"> ▪ Covered in the application and the response to previous questions
<ul style="list-style-type: none"> • A breakdown of costs and revenue streams in the format of a P&L account and Summary Balance Sheet for a 5-year period 	<ul style="list-style-type: none"> • The tab 'Operational Costs' within the financial model contains a number of assumptions about scheme costs relating to logistics and other scheme operations. How were these assumptions arrived at? What gives you confidence that they are correct? <p>Please read this summary in conjunction with the information provide previously. In general the core assumptions used in logistics and scheme operations came from previous work published by Zero Waste Scotland and the Scottish Government, and then subsequently reviewed and modified as a result of additional modelling and insight. This led to three main areas where the operational costs relating to logistics and other scheme operations submitted within the application document differ from that previous work.</p> <p>Return Point Collections</p> <p>The Target Operating Model (TOM) developed by ZWS assumed that the collection of scheme material from return points would be completed by a new fleet of vehicles and crews dedicated to this purpose. In order to reduce the environmental impact of around 2 million additional driven miles annually created by this proposal, and to reduce the operational costs to the scheme administrator, CSL propose to use vehicles and crews that are already completing delivery routes either to or past return points to collect scheme material. The labour, fuel and vehicle leasing costs associated with the driving element of the route are already absorbed by the delivery operator, and CSL are responsible for the additional variable costs incurred during the uplift process at the collection point and unloading the vehicle at the end of the route. This new way of working generated a saving in the order of 50% and the approach has been validated through discussions with several potential logistics partners.</p> <p>Bulking Points</p> <p>As detailed in the previous submission, ZWS assumed that all scheme material was transported via a bulking centre on the way from the end of a collection route to a counting centre. CSL only use this routing when it can be demonstrated to save money. The preferred method is always to route directly from a collection route directly to a counting centre. Hence, the new way of working dramatically reduces the volume of scheme material incurring a processing fee at a bulking centre, by around 80%. In addition, the processing fee used by ZWS was too high. CSL calculated a more realistic processing fee using activity based costing techniques for the actual task, and the cross docking of roll cages rather than the bulk handling of waste. The revised processing fee is about 25% of that used by ZWS. As a result, the optimum number of bulking centres is now considered to be [Redacted] Overall, this new way of working generated a saving in the order of 80%.</p>

Counting Machines

Following detailed conversations with one of the leading global manufacturers of counting machines there appears to be an error in the TOM produced by ZWS associated with the counting capacity of each machine. Correcting this mistake reduces the number of counting machines from 50 to 24. In addition, allowing glass to be naturally broken eliminates the need for bottles returned via an automatic return point to be counted at a counting centre. This reduces the number of machines further, from 24 to 8. This impacts labour and property costs at the counting centres, and facilitates the concept of smaller co-located counting centres. Overall, these changes deliver a saving in the order of 80%. Glass naturally broken and the seven day working week contribute to smaller reductions in all associated cost centres.

At all times throughout this process CSL [Redacted], using models that were originally created on behalf of ZWS. The new set of assumptions was created, and the output validated, by a senior operations and logistics professional with 35 years of experience in the brewing industry. Quality assurance was carried out by a similar individual, with 40 years of experience. It is recognised that the results are subject to operational trials and commercial negotiations with potential suppliers. This combined with uncertainty around the original assumptions on the number and location of return points, and the impact of online sales activity of the required counting capacity, has led to the decision to include a contingency fund of 50% of calculated costs. This was derived from the high-level analysis of sensitivity to the variables considered.

- On p20 of your operating plan the cost associated with 'IT system final release' is given as [Redacted] Does this include any contingency?

[Redacted] .

Some of our cost lines are estimates, pending the development of detailed specifications and the commencement of procurement activity. For IT we have estimated conservatively (using estimates of systems build from other jurisdictions, and our team's collective experience). We have sources of contingency funding available to us towards the end of the programme if those estimates prove low.

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Sensitivity analysis

We are keen to see a sensitivity analysis setting out the impact on your finances of changes to key assumptions.

We would like you to model the impact if each of the assumptions in the below table were to take on a 'reasonable worst case' value. While we would like you to provide your own reasonable worst-case values, we have included suggested minima below.

For each of the assumptions listed in the table below please provide us with:

- An updated financial model where this assumption takes on its 'reasonable worst case' value;
- An updated financial model where every assumption listed below takes on its 'reasonable worst case' value;

Assumption to test	Suggested minimum for reasonable worst case
Startup funding ([Redacted] in application)	£20m
Loan interest rate (10% in model)	15%
Operating costs	25% increase
Unredeemed deposits (10% in steady state in model)	8%
Cost of fraud borne by CS Ltd (£0 in model)	FBC1 Addendum estimates (£6.9m average in years 6-9)
Material resale value	PET: £100 Al/Steel: £650/tonne Green glass: £0/tonne

Please also provide:

- A summary table showing non-material-specific producer fee broken down by 'average during observatory period' and 'average post observatory period' for the following scenarios:
 - Where each of the assumptions above takes on its 'reasonable worst case' value (with the other assumptions above unchanged)
 - Where every assumption listed above takes on its 'reasonable worst case' value;
 - 100% increase in return points (already modelled by CSL)
 - 10% increase in retail handling fee (already modelled by CSL)
 - Where VAT is payable at 20% on unredeemed deposits
 - The original model before any sensitivity analysis is carried out.
 - Original business case (addendum March 2020)

The requested tables are attached as an addendum to this response. We also have full financial models underpinning each scenario – they are available if also required.

Questions

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Quantum of startup funding

- Please provide a detailed breakdown of the components of the [Redacted] assumed for startup costs in the operating plan, indicating which are capital and which are revenue. Please provide evidence for these cost estimates, and quantum of contingency built into the estimate.

[Redacted]

The assumptions underpinning these estimates are as follows:

- Staff salaries
 - A detailed organisation model has been built, showing all staff and board members required, by month, with salaries commensurate with market rate, and a conservative 50% uplift to cover employment costs and benefits
 - There is no explicit contingency, but conservatism has been applied through salaries assumed at the higher end of estimates, and optimistic early start dates
- Project team
 - This covers the contract costs of a programme management team, largely drawn from the current team (using actual cost data) and with the addition of board consultant and professional modelling services
 - Contingency is provided through assumed 100% utilisation (i.e. no leave) and the possibility that some of the team could convert to one or more of the staff roles
- Fees and insurance
 - This covers the range of accounting, legal and search fees, company insurance and board discretionary spend
 - The figures are based on actual spend for some of the fee types, and input from experienced directors
- Comms, branding and PR
 - Covers the costs for branding, the comms to support company launch and the various campaigns planned, and PR services
 - Some of the figures are based on actual current spend, with input from experienced PR professional. The communications work took initial estimates provided from Zero Waste Scotland and uplifted by 100% given the uncertainty of the type of comms likely to be deployed at launch
- Office, IT and services (including capex)
 - Covers space, heating/light/power, data services and office IT (the hardware aspects like laptops are included within capex)
 - Most of the spend here is aligned to ramp up of headcount so has similar contingency to that. Office IT costs based on actual data
- IMS – opex and capex
 - Opex covers services and licences associated with the full build of the SA information management system. Capex covers the hardware/infrastructure and other elements that can be capitalised

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- The estimates are based partially on spend in other schemes, and input from experienced programme managers in this area. The estimates are believed to be conservative, but like all IT spend will only be more accurately assessed once detailed requirements are available
- Totes and cages
 - Covers the boxes and cages used in the logistics service to hold glass and full bags of containers
 - The numbers required come from the detailed operating analysis for logistics, with a small contingency applied. The financial model assumes a loss and breakage rate year on year.

[Redacted] If additional spend is required we expect to access additional funding sources through the mechanisms described in the application (including advance payment of producer fees).

Operating costs

- Please provide the evidence underlying the operating cost assumptions set out in the model (for review by SG via a Teams call if desired) when the scheme is fully operational [Redacted], in particular higher-value items (operational staff costs, truck rental, transport, handling costs, counting facility and capital expenditure)
We have hosted 2 Teams call with your lead reviewer and provided supporting information before and during the session to facilitate the review.

Observatory period

- What would the implications be if your auditor mandated a 5-year observatory period instead of the 3 proposed?
The drop in producer fee currently showing in year 4 would move to year 6 (implying a higher PF for an extra 2 years). The deposit liability fund would increase by approximately [Redacted] – one tactical impact is that it is likely we would appoint an additional banking partner to spread the risk of default across multiple partners.
We maintain our view that this scenario is extremely unlikely, having already engaged with a number of auditors. As a minimum we would expect a percentage release of some of the year 1 liability fund within 3 years.
- What confidence can you give us that your represented producers would be willing to pay the higher producer fee for an extra two years if required to manage this?
We have not fully explored this scenario with producers, but we are aware they would like the period to be as short as possible. One option to consider would be to take out a loan, secured against the extra liability fund, to allow the fee to be reduced earlier. Other options are likely to be available, particularly from our banking partners engaged at that stage who will by then be familiar with the dynamics of the cost model of the business.

Cost of fraud

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- How will you minimise the risk of fraud other than through fraudulent return of non-deposit-bearing containers, e.g. employee fraud, in a manner commensurate with the level of cash Circularity Scotland Ltd will be managing?

Having reviewed the financial operating model with experienced FDs, we believe that there will be very little physical cash handling within the company. Our focus on fraud management and detection is therefore based on data (finance and container) and physical access management and monitoring. The range of techniques we will adopt include:

[Redacted]

Underpinning most of the fraud management process will be the use of advanced analytics and trend/anomaly detection capability provided by our Information Management System, and the built-in fraud detection/prevention in the RVMs used in the scheme.

- What financial provision have you made for the cost of wider fraud?
We have adopted a different approach to the provision for fraud, compared with that proposed in the FBC. Rather than assuming a generic rate of fraud through the injection of undeclared containers into the system (the costs of which are then spread over all producers) we will adopt an approach which attributes fraud as far as possible to the responsible producer. Undeclared containers covers the range of containers which are injected into the system without a deposit being paid. Sources include cross border return of containers bought in England, grey market imports, inaccuracies in declaration of volumes placed on the market etc. The costs associated with these containers (which are all associated with the use of a UK-wide SKU) will be modelled/estimated and used to calculate a higher PF which will recover the PF and deposit associated with those containers. Over time those estimates will be informed and improved by actual data acquired via the IMS. So we may assume for example that there are 5% extra containers in the system, and calculate the higher PF on that basis, then assess against actual data. We are likely to use a slightly higher level than estimated, on the basis that if we believe the average excess is 5% then there would be still be a 50% probability that the producer could benefit (if for example the actual rate was 4.7%). If the data is robust we will consider a form of true-up at the end of each year.

So for these reasons we believe the significant majority of the cost of fraud will be covered by this approach. There will always remain a small level which can't be apportioned (e.g., our ability to detect anomalies in relative return rates of similar SKUs will have a finite resolution) – we consider this level to be within the estimate error used elsewhere so haven't modelled it. Such costs would obviously appear as additional RHF and deposit repayment costs and so contribute to a marginally higher PF for all producers.

- For fraud related to return of non-deposit bearing containers and where return rates for producers do not exceed 100%, how likely is it that these costs will fall to CSL and what is a reasonable estimate for these costs?

As above we expect to apportion the significant majority of (possibly more than) these costs through the higher producer fee calculation method. The higher PF approach will be underpinned by the intent to charge for any

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material difference in return rate for a given SKU, above the average rate of other Scottish SKUs (this is an approach we will adopt from another country's scheme administrator). We will conduct more intensive modelling prior to finalising the producer agreement, but as a representative example:

- [Redacted]

Producer fee

- What assessment have you carried out of what maximum level of producer fee the market is likely to bear?

We have not conducted any such assessment. Our focus has been on the design of a highly efficient scheme, and there is evidence that this is being achieved through the reduction of the PF compared with the FBC.

Regulatory costs

- How is the cost of producer registration fees payable to SEPA accounted for in your model? (The FBC Stage 1 Addendum assumed this would amount to £965k p.a.)

The SEPA registration fee is a straight pass-through cost and so isn't shown in the financial model. The producer agreement requires that each producer pays CSL the regulator fee several weeks in advance of CSL's deadline to pay the regulator, to ensure there are no cash flow issues for CSL.

Deviations from original business case

- A list of key changes have been provided. What are the efficiency improvements that have been assumed to reduce Opex?

This question has been answered in our response file name "DRS - SA assessment - additional information on finance - 17 March 2021 CSL response" issued on 18 March 2021.

- What other changes have been made (e.g. costs of fraud now removed)
In addition to the changes highlighted in this document and previous responses, the following significant changes have been incorporated into our modelling:

- Reduction in capex and opex through the outsourcing of the build of the counting centres
- No annual growth in container numbers as a result of Covid market distortion
- 3 year observatory period instead of 5 years
- Incorporation of a take back RHF and inclusion of a material percentage of containers through that channel
- Reduction in SA headcount because of outsourcing of counting centre and waste management services
- Inclusion of board costs
- Inclusion of a reserve fund in the balance sheet (built up as [Redacted])

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- Return rate of 81% used in years 1 & 2 to reflect a higher uptake and an element of initial fraud/mis-return at implementation
- RVM collection volume reduced by 10% and Takeback increased from 0 to 10%. [Redacted]

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Response to General Questions on PF and Cashflow

Impact of PF Growth from adoption of more likely scenarios

The base case financial model makes several conservative assumptions:

- 2% annual inflation for operating costs (logistics and counting/sorting centres and RHF)
- Zero growth of container numbers
- 0% annual increase in the value of PET
- 0.01% interest on the deposit liability fund

In addition, with the substantial reduction in operating costs the percentage of income represented by the [Redacted] In the same period the PF/container averaged over all materials rises by 30%. In an attempt to consider a perhaps more likely scenario we re-ran the model with some changes as follows.

Increase container numbers

National Records of Scotland predict the population of Scotland will increase from 5.40 million in 2016 to 5.58 million in 2026 and grow further to 5.69 million in 2041. This represents an increase of 5.4% over 25 years, or an annual rate of 0.22%. In line with this demographic shift, the number of containers entering the market will be assumed to inflate by 0.25% per year from 2024 onwards (which is also the value used in the FBC).

Increase value of PET

A recent report has highlighted the increased value of recovered PET achieved by deposit schemes operated across Europe, driven by the exceptional quality of the material compared to other waste streams, and the consolidated volume available from a single contract. Values in excess of £500/tonne have been quoted. In addition, the price of rPET is likely to increase on the introduction of the plastics tax. A prudent approach has been adopted by assuming a current value of £300/tonne, increasing by 5% annually thereafter. Aluminium and glass values will be inflated by 2% annually.

Adopt year on year contract performance improvement

It is normal business practice to minimise the impact of inflation on operating costs by deploying techniques such as bottom-up budgeting (eliminating the concept of last year's budget plus inflation as a benchmark for this year's budget) and continuous improvement. We therefore consider a scenario where all procurement contracts with service providers will include clauses that motivate suppliers to maintain a like for like budget for the first three years of operation, and to limit inflationary increases to less than 1% annually thereafter. The same approach will be taken by CSL with internal cost centres.

Interest on deposit liability fund

In addition, it will be assumed that an ultra-low risk investment policy will generate a yield of 0.5% on the deposits fund, both unredeemed and in process.

Impact

The table below shows the impact of the adoption of each change singly and then collectively.

[Redacted]

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As expected, in all cases it shows that the percentage of income represented by the PF reduces (since each change is either a cost reduction or an increase in income). The container growth change has least impact, and the increase in PET sales has the greatest impact. Incorporation of all 4 changes reduces the percentage of PF as income by 5% points.

The growth in PF between 2026 and 2030 follows a different pattern. The dominant driver in the cost base is the 2% yoy increase in RHF – starting from a base of around [Redacted] to compensate. The variations in material sales, interest and opex reduction annually are much lower. But although the impact of all 4 changes results in a 35% increase over the 5 year period, the PF starts at a lower level, and by 2030 is only 0.04p higher than the PF in 2026 in the base case.

Monthly cash flow analysis

There are a number of considerations, yet to be determined, when producing a monthly cash flow for CSL. These include:

- The mix between Scottish specific and UK wide SKUs (pertinent for 1st live month).
- The cycle time between first sale in the supply chain and return for deposit redemption.
- Material price recovery
- Treatment of and access to unredeemed deposits

CSL's plans include invoice prepayment (possibly discounted) and to carry forward some set up working capital / bank credit to assist with month 1 cash flow.

Following month 1 the monthly cash flow should be proportional to the annual cash flow presented.

SKU mix & Cycle Time

For those organisations utilising UK wide SKUs the producer will be required to make a return to CSL to cover the stock already in the market at the end of the month prior to live date. As the EAN will be registered as a scheme article the retailer will be required to charge deposits to the consumer (irrespective of whether a deposit was paid to the supplier) and the consumer can return these scheme articles from day 1. CSL will establish a protocol to determine the quantity of stock in the supply chain on live date and will require the producer to make payment for both PF and deposit on this stock. CSL will receive this cash around 2 weeks into month 1 (actual payment terms date is yet to be confirmed). Payments will be made via direct debit. The maximum exposure for these SKUs in cash flow terms for redeemed deposits and RHF, which are planned to be paid weekly or 7 days from uplift should be limited to max of around 1 week assuming the supply chain stock has been determined accurately.

For new Scottish SKUs the producer will plan to release these into the supply chain from day 1. Earlier release may be problematic with regard to the charging of deposits. The old equivalent SKU can continue to be sold by wholesalers and retailers until stock is exhausted. CSL will not be exposed to deposit redemption on the old EAN as the code will not be registered as a scheme article. However as under ideal circumstances no releases of new Scottish SKUs will take place until day 1 the issues will not be reported to CSL until the end of month 1 with payment some two weeks later. Depending on the cycle time from sale by the producer to consumption / return by the consumer CSL will be exposed to remitting the deposit return and RHF prior to receipt of funds from the producer. The deficit for CSL could equate to around a max 6 weeks, but with an average potentially much lower given the cycle time from issue to consumption / return.

As these producers effectively report one month in arrears this first month deficit is not naturally recovered.

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Material recovery

The PF includes credit for the material recovered and so credit is effectively given to the producer when the PF is levied. As described above some returns may come back prior to remittance by the producer. It is therefore incumbent on CSL to ensure that materials are sorted and sent to reprocessors as quickly as possible with the shortest possible payment terms.

Unredeemed deposits

With the potential build up of unredeemed deposits CSL will, subject to the deposit reserve not having to be retained intact, will have access to significant cash reserves. Furthermore depending on how unredeemed deposits become available CSL may have access to a significant cash sum at the start of the each year following the observatory period which would then effectively be distributed to producers throughout the course of the year as part of the PF.

VAT

VAT is due for payment on the 7th day of the second month after the relevant three-month reporting period. CSL intends to operate strict payments terms within 30 days, both credits and debits. Therefore, it is difficult to envisage any circumstances where sufficient funds are not available to settle the VAT liability on the due date.

[Redacted]

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Approach to the Development of the Operating Plan

Current situation

The operating plan will define for each return point (RP) the collection frequency for returned containers, and lay out any associated rules that RPs must follow to ensure an efficient DRS (these will include bags/receptacles, labels, collection procedures etc.). The operating plan submitted within the application is relatively high level, for a number of reasons:

- The number of RPs used in modelling is based on that issued by Zero Waste Scotland, but we know that this number is much lower than reality
- There is no firm data on actual collection volumes expected at each return point, or size of storage space
- There are no backhaul contracts in place, so the assumption is that CSL will visit every return point.

Based on this initial data set CSL have made some assumptions about collection frequency to allow a first version of the collection service to be modelled and an initial version of the operating plan to be developed:

- Any automatic return point will have a daily collection
- Any manual return point will have a weekly collection
- 10% by number of containers will be collected through takeback – collection is assumed from an automatic RP
- Any RP can request a collection on demand

We are currently refining the dataset of RPs, engaging with potential partners to run the logistics contracts, and discussing with several organisations the options for backhaul. For those reasons, and aligned to our overall implementation plan, we envisage three major releases of new versions of the operating plan before go live.

End of June 2021

By this date we will have completed the refining of the overall RP dataset (we believe the total number of RPs is in the range 35k-40k). We will have input this to the logistics model and produced a revised output. At that point we expect to have a broader range of collection frequencies (for example the doubling of the number of RPs will mean that some RPs won't justify a weekly collection) and we will be able to allocate an estimated number of RPs to each collection frequency:

- Twice daily (numbers are expected to be low but some automatic RPs may have flagged storage space concerns to us)
- Daily
- Weekly
- Fortnightly
- On demand (this will cover both RPs on a standard collection frequency who experience a spike, and a group of RPs who are formally allocated to this category and who will simply call us when ready for a collection)

End of December 2021

In the second half of 2021 we will have moved substantially from modelled data to actual data, through three main activities:

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- Registration of RPs, where we will seek information on sales volume and storage space to allow us to more accurately estimate an optimum collection frequency
- Agreements in principle (perhaps also signed contracts) with backhaul operators. There are two main types – the major retailers, who could backhaul from a relatively small number of stores but collect very high volumes of containers, and the wholesalers who deliver to a large number of smaller locations and so could take responsibility for a large percentage of the 35k-40k RPs
- Completion of the design of the various types of take back service required

Our operating plan at this stage will be much more detailed and will increasingly be based on actual data. We would expect to maintain the 5 types of collection frequencies from the previous plan, but with more confidence in the number of RPs in each category.

Immediately before Go Live

This will be the most accurate pre-launch operating plan. We expect the vast majority of RPs to have registered by then, and we will have all backhaul contracts signed. More significantly at this stage we will also have factored in the impact of any exemptions and voluntary return points approved before go live (we expect these to reduce the number of RPs substantially – perhaps in the order of 10-20%). At this stage our operating plan will have an entry for every registered RP, probably using the same 5 categories as before.

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From: [Redacted]@Circularityscotland.com

Sent: 09 March 2021 14:56

To: [Redacted]@gov.scot

Subject: DRS SA application - update to Annex on Additional Benefits

Dear [Redacted]

I'd like to provide an update to the Additional Benefits annex of our application as follows (additional text in [this colour](#)):

11.4

- We have started to explore how third sector organisations could be involved in delivering aspects of DRS. We have an early model for incorporation of such organisations into a virtual distributed return point model, whereby third sector organisations support collection of scheme articles in remote or isolated parts of the country
 - Since the submission of our application we have commenced discussions with Community Resources Network Scotland (CRNS), the network membership body for the community reuse and recycling sector. CRNS has some members who may be adversely affected by the introduction of DRS, and some members who may be able to offer services to a scheme administrator. We are keen to investigate how any future new capacity in CRNS members could be deployed to DRS activities, and are particularly interested in exploring opportunities where CRNS members could provide collection services in remote areas and support voluntary return points. We intend to hold a workshop with CRNS and some of its members next month to start exploring where these opportunities may be.

Thanks

[Redacted]

[Redacted]